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United States
Circuit Court of Appeals
For the Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,
vs.
WESTERN SHORE LUMBER COMPANY,
a corporation,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

FILED

OCT 21 1942

PAUL P. O'BRIEN,
CLERK

No. 10243

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Circuit Court of Appeals
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

A. CRAWFORD GREENE, Esq.,
HENRY D. COSTIGAN, Esq.,
ROBERT MINGE BROWN, Esq.,
MESSRS. McCUTCHEN, OLNEY,
MANNON & GREENE

Balfour Building
San Francisco, California

Attorneys for Plaintiff and Appellee

HON. FRANK J. HENNESSY,

U. S. Attorney

ESTHER B. PHILLIPS,

Assistant U. S. Attorney,

Post Office Building,
San Francisco, California

Attorneys for Defendant and Appellant.

In the District Court of the United States in and
for the Northern District of California,
Southern Division

No. 21438L

WESTERN SHORE LUMBER COMPANY, a
corporation,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT

To the Honorable, the Judges of the United States
District Court for the Northern District of
California:

Plaintiff Western Shore Lumber Company com-
plains of defendant United States of America
and alleges that:

I.

Plaintiff is and at all times herein mentioned has
been a corporation duly organized and existing un-
der and by virtue of the laws of the State of Cali-
fornia. The prin- [1*] cipal place of business and
the residence of plaintiff is 403 Merchants Exchange
Building, San Francisco, California.

II.

This is an action to recover federal internal rev-
enue taxes in the nature of capital stock taxes for

*Page numbering appearing at foot of page of original certified
Transcript of Record.

the years ending June 30, 1933, June 30, 1934, June 30, 1935, and June 30, 1936, respectively, which have been erroneously and illegally assessed against and collected from the plaintiff. The action arises under the statutes of the United States providing for internal revenue and in particular Section 215 of the National Industrial Recovery Act, Section 701 of the Revenue Act of 1934, and Section 105 of the Revenue Act of 1935, and is brought under the provisions of Title 28, Section 41, Paragraph 20, of the United States Code.

III.

All returns, payments, claims for refund and other acts prerequisite to this action have been duly made and filed by plaintiff within the time required by law and the plaintiff is entitled by reason of the denial of its claims for refund to institute this action.

The dates of the filing by plaintiff of its returns under the capital stock tax and of the payment of tax thereunder and the amount of tax so paid are as follows:

Year Ending	Date Return Filed and Tax Paid	Amount of Tax Paid
June 30, 1933	August 29, 1933.....	\$1,250.00
June 30, 1934	August 31, 1934.....	25.00
June 30, 1935	July 31, 1935.....	24.00
June 30, 1936	September 18, 1936.....	1,000.00

[2]

Copies of the returns of plaintiff for the above years are hereunto annexed, marked Exhibits A-1

to A-4, inclusive, and by this reference made a part hereof.

On August 28, 1937, plaintiff filed with the Collector of Internal Revenue at San Francisco, California, its claims for refund of the amounts paid as hereinabove set forth as capital stock tax. Copies of said claims for refund are attached to this complaint, marked Exhibits B-1 to B-4, inclusive, and by this reference made a part hereof.

On January 31, 1938, plaintiff received by registered mail notification from the Commissioner of Internal Revenue, dated January 26, 1938, that the Commissioner rejected the claims for refund filed by the plaintiff. A copy of said notification of rejection of claim for refund is attached hereto, marked Exhibit C, and by this reference made a part hereof.

IV.

The action of the Commissioner of Internal Revenue in rejecting the claims of plaintiff for refund of the amounts paid as capital stock tax was erroneous for the reason that plaintiff was not at any time during the period from July 1, 1932 to June 30, 1936, carrying on or doing business. The sole function of plaintiff during said period consisted of the holding of its assets until such time as the same might be satisfactorily liquidated and of the distributing of proceeds currently received on account of such assets.

Prior to 1922 plaintiff carried on operations as a timber company but in that year a mill which

had been erected in 1917 was shut down and has not since been operated. In 1922 plaintiff reduced its activities to the mere owning and [3] holding of the timber properties then vested in it and since that date its sole activities have been directed to caring for such timber properties until the same can be liquidated in an orderly manner. The only receipts of plaintiff for the period from July 1, 1932 to June 30, 1936 were interest on bank deposits and receipts under a stumpage contract under which the plaintiff liquidated certain of its timber holdings and further receipts in the total amount of \$208.08 derived from the sale of equipment and junk. A copy of the stumpage contract under which plaintiff derived its cash receipts is attached to and forms a part of Exhibit B-1 hereto and reference is made to said exhibit for its terms and provisions.

During the period from July 1, 1932 to June 30, 1936, plaintiff had no regular employees other than a secretary and a caretaker and has employed no other person or persons other than the occasional temporary hiring of laborers to render fire protection service for the protection of the timber stands owned by plaintiff. During said period plaintiff performed no corporate acts other than the payment of taxes and the management of affairs purely internal in character necessary to the preservation of its charter. A copy of plaintiff's Articles of Incorporation is attached hereto, marked Exhibit D, and by this reference made a part hereof. Copies of the minutes of all meetings of the Board of Direc-

tors of plaintiff during the period from July 1, 1932 to June 30, 1936, are attached to Exhibits B-1 to B-4, inclusive, and reference is made thereto for the matters contained in said minutes.

Plaintiff acquired no property during the period herein mentioned and paid no dividends to any stockholder. The only property sold by plaintiff during said period was the timber [4] sold pursuant to the stumpage contract above mentioned and the equipment and junk which was sold for \$208.08. None of the corporate functions set forth in plaintiff's Articles of Incorporation as business purposes have been performed during said period and in this connection plaintiff alleges that it is not necessary under the laws of the State of California to amend the Articles of Incorporation when a corporation ceases to carry on operations.

During the period in question the timber holdings of the plaintiff consisted of approximately 12,500 acres of timber land in San Mateo County, California, and approximately 550 acres of timber land in Santa Cruz County, California. Plaintiff during said period owned no property other than the said timber lands, certain small buildings located thereon, and cash deposited in banks.

Plaintiff was not at any time herein involved affiliated with any other corporation nor did it own any stock in any other corporation.

V.

Plaintiff has carried on no business since 1922. In this respect plaintiff alleges that it filed claims for

refund of capital stock taxes paid for the years 1923 to 1928, inclusive, which refund claims were allowed by the Bureau of Internal Revenue and paid to plaintiff. The amounts paid as capital stock tax for the period herein involved were paid through inadvertence and accordingly plaintiff filed with the Commissioner of Internal Revenue its claim for refund of the taxes paid together with interest thereon, which claims were rejected by the Commissioner as hereinbefore set forth. [5] Plaintiff has not received by way of cash repayment or in the form of any credit the amount of taxes so paid or any part thereof and the Commissioner of Internal Revenue has at all times retained the amount of said taxes and all thereof.

VI.

Upon the facts recited herein plaintiff alleges that the defendant has collected and retained from it erroneously and without authority of law and contrary to the provisions of the laws of the United States relating to Internal Revenue the sum of Two Thousand Two Hundred Ninety-Nine Dollars (\$2,299.00) comprising capital stock taxes paid as hereinbefore set forth, and plaintiff further alleges that it is justly entitled to the amount of taxes so paid together with interest thereon at the legal rate from the respective dates of payment.

Wherefore, plaintiff seeks judgment for the sum of Two Thousand Two Hundred Ninety-Nine Dollars (\$2,299.00) together with interest thereon at

the legal rate from the respective dates of payment thereof, for such costs as may be allowed under Title 28, Section 258, of the United States Code, and for such other and further relief as the court may deem meet and proper in the premises.

A. CRAWFORD GREENE
HENRY D. COSTIGAN
ROBERT MINGE BROWN
McCUTCHEN, OLNEY,
MANNON & GREENE

Attorneys for Plaintiff
Office and Post Office Address:
1500 Balfour Building
San Francisco, California. [6]

(Duly Verified.) [7]

EXHIBIT A-1
(Copy)

Form 707

Treasury Department
Internal Revenue Service
Revised June 1933

Mailed

Aug. 20, 1933

To be stamped by Collector, showing
district and date received

1933 RETURN
of
CAPITAL STOCK TAX
For Year Ending June 30, 1933

DOMESTIC CORPORATIONS

(Sec. 215, National Industrial Recovery Act,
73d Congress, Public, No. 67)

This return must be filed with the Collector of Internal Revenue for your district on or before July 31, 1933, and the tax must be paid on or before that date.

TRIPLICATE

To Be Retained by Taxpayer

.....

(Collection district)

Assessment List, Form 23A

.....

(Month) (Year)

.....

(Page) (Line)

Examined by:

.....

1. Name—Western Shore Lumber Company,
2. Address—Room 2005, 111 Sutter Street, San Francisco, California
3. Name of parent company, if any — None.
(District filed.....)
4. Name of subsidiary, if any—None. No. shares held..... (District filed.....)
5. Nature of business in detail—Lumber
6. Incorporated or organized in State of California, Month—November, Year—1905.

SEE INSTRUCTIONS ON REVERSE SIDE

7. Date of close of the last income-tax taxable year ending on or prior to the year ended

June 30, 1933*—December 31, 1932. *If no income-tax taxable year ending on or prior to year ended June 30, 1933, use date of organization.

8. Capital account as shown on balance sheet as of the date set forth in item 7 (no other date should be used):

	Number of shares	Par value per share	Total
(a) Common stock	10000	100.00	\$1,000,000.00
(b) First preferred stock.....			None
(c) Second preferred stock....			None
(d) Surplus (or deficit)			
Deficit			177,928.95
(e) Undivided profits .....			.....
(f) Total .....	..		822,071.05

Computation of Tax

- | | |
|---|----------------|
| 9. Original declared value for entire capital stock as of the date shown in item 7..... | \$1,250,000.00 |
| 10. Tax at rate of \$1 for each full \$1,000 in item 9 (omit cents)..... | 1,250.00 |
| 11. Penalty of 25 percent for delinquency in filing return ..... | ..... |
| 12. Interest ..... | ..... |
| 13. Total tax, penalty and interest..... | ..... |

State of California,

County of San Francisco—ss.

We, Timothy Hopkins, President, and Myra Lane, Secretary of the corporation for which this return for capital stock tax imposed by section 215 of the National Industrial Recovery Act is made, being severally duly sworn, each for himself, deposes and says that the items entered in the fore-

going report, including any statements attached to or accompanying this return, are, to his best knowledge and belief and from such information as he has been able to obtain, true and correct.

TIMOTHY HOPKINS

President.

MYRA LANE

Secretary

Sworn to and subscribed before me this 17th day of August 1933.

[Seal] VIOLET NEUENBURG

Notary Public in and for the City and County of
San Francisco

(Official capacity) [8]

EXHIBIT No. 2-A

(Copy)

Form 707

Treasury Department

Internal Revenue Service

Revised June 1934

Mailed Aug. 31, 1934

Check #950—\$25.00

To be stamped by collector, showing
district and date received

Duplicate

.....
(Collection district)

Assessment List, Form 23A

.....

(Month) (Year)

.....

(Page) (Line)

Examined by:

.....

1934 RETURN
OF
CAPITAL-STOCK TAX

For year ending June 30, 1934

DOMESTIC CORPORATIONS

(Sec. 701, Revenue Act of 1934, 73d Congress,
Public, No. 216)

This return must be filed with the Collector of Internal Revenue for your district on or before July 31, 1934, and the tax must be paid on or before that date.

1. Name—Western Shore Lumber Company.
2. Address—Room 2005-111 Sutter Street, San Francisco California.

(The address must be that of the principal place of business. Give “Street and number”, “City or town”, and “State”)

3. Name of parent company, if any None (District filed.....)
4. Name of subsidiary, if any None No. shares held (District filed.....)

(Or attach list and state number of shares held; also districts where filed)

5. Nature of business in detail Lumber

6. Incorporated or organized in State of California Month November Year 1905

Declaration of the Value of the Capital Stock

Important.—Before declaring a value for the capital stock, carefully read the instructions below, as a value once declared cannot later be amended.

If you file your income tax return on a calendar year basis, or would do so if subject to income tax, declare in the space below a value for the entire capital stock of your corporation as of December 31, 1933, which you are willing to have accepted in this and subsequent years, as a basis, subject to statutory adjustments, on which to pay capital-stock tax and excess-profits tax.

If you file your income-tax return on a fiscal year basis, or would do so if subject to income tax, declare the value as of the close of such fiscal year.

If your corporation was organized during the year July 1, 1933, to June 30, 1934, both dates inclusive, and if neither the first calendar year nor the first fiscal year for income-tax purposes has ended during the year July 1, 1933, to June 30, 1934, both dates inclusive, declare the value as of the date of organization.

If your corporation is without a capital stock represented by shares, declare a value for the net worth of the corporation.

(See Instruction No. 3 for additional information)

7. *Value of entire capital stock—\$25,000

*A specific and unqualified value must be shown in this space. If the capital stock is of no value insert the word “None.”

Exemptions. (See Instruction No. 4)

- 8. Is exemption from the tax claimed? Answer Yes or No (.....).
- 9. If exemption is claimed, check the block which shows basis of claim and furnish the information required on page 2.

Section 101, Revenue Act of 1934.

Insurance company.

Not doing business.

Computation of Tax

	For use of Taxpayer	For use of Department
10. Amount shown in item 7.....	\$25,000	\$.....
11. Tax at rate of \$1 for each full \$1,000 in item 10 (omit cents).....	25	.....
12. Penalty of 25 percent for delinquency in filing return.....		.....
13. Interest .....		.....
14. Total tax, penalty, and interest.....	25	.....

AFFIDAVIT

We, the undersigned, president (or vice president, or other principal officer) and treasurer assistant treasurer or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return, including the accompanying schedules and statements, has been examined by

him and is, to the best of his knowledge and belief, a true and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1934 and the Regulations issued thereunder.

[Corporate Seal]

TIMOTHY HOPKINS

(President or other principal
officer) (State title)

MYRA LANE

Secretary

(Treasurer, Assistant Treas-
urer, or chief accounting
officer) (State title)

Sworn to and subscribed before me this August
31, 1934.

[Notarial Seal]

JENNIE DAGGETT

Notary Public

(Signature of officer admin-
istering oath)

(See Instruction No. 7) [9]

REVENUE ACT OF 1934

TITLE V—CAPITAL-STOCK AND EXCESS- PROFITS TAXES

Section 701. Capital-Stock Tax

(a) For each year ending June 30, beginning with the year ending June 30, 1934, there is hereby imposed upon every domestic corporation with respect to carrying on or doing business for any part

of such year an excise tax of \$1 for each \$1,000 of the adjusted declared value of its capital stock.

(b) For each year ending June 30, beginning with the year ending June 30, 1934, there is hereby imposed upon every foreign corporation with respect to carrying on or doing business in the United States for any part of such year an excise tax equivalent of \$1 for each \$1,000 of the adjusted declared value of capital employed in the transaction of its business in the United States.

(c) The taxes imposed by this section shall not apply:

(1) to any corporation enumerated in section 101;

(2) to any insurance company subject to the tax imposed by section 201, 204, or 207;

(3) to any domestic corporation in respect of the year ending June 30, 1934, if it did not carry on or do business during a part of the period from the date of the enactment of this act to June 30, 1934, both dates inclusive; or

(4) to any foreign corporation in respect of the year ending June 30, 1934, if it did not carry on or do business in the United States during a part of the period from the date of the enactment of this act to June 30, 1934, both dates inclusive.

(d) Every corporation liable for tax under this section shall make a return under oath within one month after the close of the year with respect to which such tax is imposed to the collector for the

district in which is located its principal place of business, or, if it has no principal place of business in the United States, then to the collector at Baltimore, Md. Such return shall contain such information and be made in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector before the expiration of the period for filing the return. If the tax is not paid when due, there shall be added as part of the tax, interest at the rate of 1 per centum a month from the time when the tax became due, until paid. All provisions of law (including penalties) applicable in respect of the taxes imposed by section 600 of the Revenue Act of 1926 shall, insofar as not inconsistent with this section, be applicable in respect of the taxes imposed by this section. The Commissioner may extend the time for making the returns and paying the taxes imposed by this section, under such rules and regulations as he may prescribe, with the approval of the Secretary, but no such extension shall be for more than 60 days.

(e) Returns required to be filed for the purpose of the tax imposed by this section shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under title II of the Revenue Act of 1926.

(f) For the first year ending June 30 in respect of which a tax is imposed by this section upon any

corporation, the adjusted declared value shall be the value, as declared by the corporation in its first return under this section (which declaration of value cannot be amended), as of the close of its last income-tax taxable year ending at or prior to the close of the year for which the tax is imposed by this section (or as of the date of organization in the case of a corporation having no income-tax taxable year ending at or prior to the close of the year for which the tax is imposed by this section). For any subsequent year ending June 30, the adjusted declared value in the case of a domestic corporation shall be the original declared value plus (1) the cash and fair market value of property paid in for stock or shares, (2) paid in surplus and contributions to capital, (3) its net income, (4) the excess of its income wholly exempt from the taxes imposed by title I over the amount disallowed as a deduction by section 24(a) (5) of such title, and (5) the amount of the dividend deduction allowable for income-tax purposes, and minus (A) the value of property distributed in liquidation to shareholders, (B) distribution of earnings or profits, and (C) the excess of the deductions allowable for income-tax purposes over its gross income; adjustment being made for each income-tax taxable year included in the period from the date as of which the original declared value was declared to the close of its last income-tax taxable year ending at or prior to the close of the year for which the tax is imposed by this section. The amount of such adjust-

ment for each such year shall be computed (on the basis of a separate return) according to the income-tax law applicable to such year. For any subsequent year ending June 30, the adjusted declared value in the case of a foreign corporation shall be the original declared value adjusted (for the same income-tax taxable years as in the case of a domestic corporation), in accordance with regulations prescribed by the Commissioner, with the approval of the Secretary, to reflect increases or decreases in the capital employed in the transaction of its business in the United States.

Section 702. Excess-Profits Tax

(a) There is hereby imposed upon the net income of every corporation, for each income-tax taxable year ending after the close of the first year in respect of which it is taxable under section 701, an excess-profits tax equivalent to 5 per centum of such portion of its net income for such income-tax taxable year as is in excess of $12\frac{1}{2}$ per centum of the adjusted declared value of its capital stock (or in the case of a foreign corporation the adjusted declared value of capital employed in the transaction of its business in the United States) as of the close of the preceding income-tax taxable year (or as of the date of organization if it had no preceding income-tax taxable year) determined as provided in section 701. If the income-tax taxable year in respect of which the tax under this section is imposed is a period of less than 12 months, such adjusted declared value shall be reduced to an amount

which bears the same ratio thereto as the number of months in the period bears to 12 months. For the purposes of this section the net income shall be the same as the net income for income-tax purposes for the year in respect of which the tax under this section is imposed.

(b) All provisions of law (including penalties) applicable in respect of the taxes imposed by title I of this act, shall, insofar as not inconsistent with this section, be applicable in respect of the tax imposed by this section, except that the provisions of section 131 of that title shall not be applicable.

Section 703. Capital-Stock Tax and Excess-Profits
Tax Imposed by National Industrial Recovery
Act

Sections 217(d) and (e) of the National Industrial Recovery Act are amended to read as follows:

“(d) The capital-stock tax imposed by section 215 shall not apply to any taxpayer in respect of any year except the year ending June 30, 1933.

“(e) The excess-profits tax imposed by section 216 shall not apply to any taxpayer in respect of any taxable year ending after June 30, 1934.”

EXHIBIT No. A-3

(Copy)

Form 707

Treasury Department

Internal Revenue Service

Revised 1937

Mailed Jul 31 1935

Signed by Timothy Hopkins—President

Myra Lane—Secretary

Acknowledged by Jennie Daggett, Notary

To be stamped by collector showing district and
date received

Duplicate—Page 3

.....

(Collection district)

Assessment List, Form 23A

.....

(Month) (Year)

.....

(Page) (Line)

(For Washington Use Only)

1935 RETURN
OF
CAPITAL-STOCK TAX

For Year Ending June 30, 1935

DOMESTIC CORPORATIONS

(Sec. 105, Revenue Act of 1935, as amended by Sec.
401 of the Revenue Act of 1936)

This return must be filed, in triplicate, and re-
ceived by the Collector of Internal Revenue for

your district on or before July 31, 1935. The tax must be paid on or before that date.

1. Name—Western Shore Lumber Company.
2. Address—Room 2005, 111 Sutter Street, San Francisco, California.
3. Name of parent company, if any..... (District filed.....)
4. Name of subsidiary, if any No. shares held (District filed)

(If more than one, attach list and state number of shares held by parent; also districts where filed)

5. Nature of business in detail Lumber (Timber stumpage)
6. Incorporated or organized in State of California Month November Day Year 1905
7. Was a capital-stock tax return filed for the preceding taxable year ended June 30, 1934? Yes. If filed under a different name, state the name (District filed....)
8. Date of close of last income-tax taxable year ended on or prior to June 30, 1935, or, if newly organized corporation having no income-tax taxable year ended on or prior to June 30, 1935, date of organization December 31, 1934.

Corporations making an original declaration of value upon this return must enter the amount of such declared value in item 9. This block is not to be used by a corporation which established its origi-

nal declared value by the first return for the year ended June 30, 1934.

9. Original declared value of entire capital stock
\$.....

(The value declared must be definite and unqualified. A value must be declared in every case regardless of whether exemption from the tax is claimed. See instructions 1 and 3)

Corporations which have established their original declared value by the return for the year ended June 30, 1936, must adjust such declared value as provided for in Schedule I on page 2 of this return and then enter the amount of the adjusted declared value in item 10.

10. Adjusted declared value of entire capital stock as of Dec. 31, 1934 \$24,536.44.

11. Exemptions.—The Act provides for an exemption from the tax only on the grounds indicated below. Corporations claiming exemption must (1) report a value for the capital stock under item 9 or 10, (2) check the appropriate block below, showing the basis of the claim, and (3) submit with the return a full statement of the evidence specified under the block checked.

Corporation exempt from income tax under section 101, Revenue Act of 1936. (1) State under which subsection of section 101.....
(2) Furnish information required by instruction 14.

Insurance company subject to tax under section 201, 204, or 207, Revenue Act of 1936.

State which section.....

Corporation not doing business. (1) Furnish information required by instruction 16. (2) Report value of capital stock in item 9 or 10 above.

Computation of Tax

	For use of Taxpayer	For use of Department
12. Amount reported in item 9 or 10.....	\$24,536.44	\$.....
13. Tax at rate of \$1 for each full \$1,000 in item 12 (omit cents).....	24	.....
14. Penalty of per cent for delin- quency in filing return.....	.....	.....
15. Interest at 6% per annum begin- ning August 1, 1937.....	.....	.....
16. Total tax, penalty, and interest.....	.....	.....

We, the undersigned (Name of president, vice president, or other principal officer), (Title) and (Name of treasurer, assistant treasurer, or chief accounting officer), (Title), of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return, including any accompanying schedules and statements, has been examined by him and is, to the best of his knowledge and belief, a true and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1935, as amended, and the Regulations issued thereunder.

[Corporate Seal]

.....

(Name)

.....
(Title)

.....
(Name)

.....
(Title)

[Notarial Seal]

.....
(Name)

.....
(Official capacity of officer
administering oath) [101]

The schedules on this page must be filled in by every corporation making adjustments to an original declared value for the capital stock established by the return for the year ended June 30, 1934. See instructions 5 to 9, inclusive.

Schedule I. Adjustment of Original Declared Value of Entire Capital Stock for All Transactions During the Income-Tax Taxable Year Ended December 31, 1934.

Original declared value as established by the first return for the taxable year ended June 30, 1934....\$25,000.00

Additions:

- (1) (a) Total cash paid in for stock or shares (see instruction 7, item 1) \$.....
- (b) Fair market value of all property received for stock or shares (see instruction 7, item 1).....
- (2) Paid-in surplus and contributions to to capital (see instruction 7, item 2)
- (3) Net income (see instruction 7, item 3) Loss 463.56†
- (4) Excess of income wholly exempt from tax over amount disallowed as deduc-

tions by section 24(a)(5) of the Revenue Act of 1934 or 1936 (see instruction 7, item 4).....	
(5) Dividend deduction allowable for income-tax purposes (see instruction 7, item 5)	
Total additions	
Total before deductions.....	\$25,000.00

Deductions:

(A) (1) Total cash distributed in liquidation to shareholders (see instruction 7, item A).....	None
(2) Fair market value of all property distributed in liquidation to shareholders (see instruction 7, item A)	None
(B) Distributions of earnings or profits (see instruction 7, item B).....	None
(C) Excess of deductions allowable over gross income and claimed on income-tax return (see instruction 7, item C)	
Total deductions	463.56
Adjusted declared value (enter in item 10, page 1).....	\$24,536.44

†Indicates red figures.

Schedule II. Analysis of Changes in Capital
Stock and Surplus

Capital Stock and Surplus at beginning of year

1. Capital stock: Preferred.....	\$
Common.....	1,000,000.
2. Capital or paid-in surplus.....	
3. Surplus reserves—Capital surplus.....	449,140.95
4. Surplus and undivided profits.....	

Additions—Capital transactions

5. Total cash and fair market value of property paid in for stock or shares (total of items 1(a) and 1(b), Schedule I)*.....	-----
6. Paid-in surplus and contributions to capital (item 2, Schedule I)*.....	-----
7. Other additions (to be detailed).....	-----
-----	-----

Additions—Revenue transactions

8. Net income (item 3, Schedule I).....	-----
9. Income wholly exempt from income tax. (This total less the amount entered as item 17 of this schedule should correspond with item 4, Schedule I) (See instruction 7, item 4)....	-----
10. The amount of the dividend deduction allowable for income-tax purposes (item 5, Schedule I) (see instruction 7, item 5).....	-----
11. Other additions (to be detailed).....	-----
-----	-----
Total	\$1,449,140.95

Deductions—Capital transactions

12. Liquidating distributions (total of items A(1) and A(2), Schedule I)*.....	\$.....
13. Other distributions (item B, Schedule I)*....	-----
14. Enter class and amount of distributions in corporation's own stock:	
----- \$.....	x x x x
15. Other deductions (to be detailed).....	-----

Deductions—Revenue transactions

16. Excess of deductions allowable over gross income and claimed on income-tax return (item C, Schedule I).....	463.56
17. Deductions disallowed by sec. 24(a)(5), 1934 or 1936 Act. (See item 9 of this schedule)	-----
18. Other deductions (to be detailed).....	-----
-----	-----

Capital Stock and Surplus at end of year

19. Capital stock: Preferred.....	-----
Common.....	1,000,000.00

20. Capital or paid-in surplus.....	.....
21. Surplus reserves—Capital surplus.....	448,677.39
22. Surplus and undivided profits.....	.....
<hr/>	
Total	\$1,449,140.95

*Enter values shown by the books if different from values entered in Schedule I and explain difference.

EXHIBIT No. A-4
(Copy)

Form 707

Treasury Department

Internal Revenue Service

Revised 1936

To be stamped by collector, showing district and
date received

Duplicate—Page 3

.....

(Collection district)

Assessment List, Form 23A

.....

(Month) (Year)

.....

(Page) (Line)

(For Washington Use Only)

1936 RETURN
OF
CAPITAL-STOCK TAX

For Year Ending June 30, 1936

DOMESTIC CORPORATIONS

(Sec. 105, Revenue Act of 1935, 74th Cong., Public,
No. 407)

This return must be filed, in triplicate, with the Collector of Internal Revenue for your district on or before July 31, 1936, and the tax must be paid on or before that date.

1. Name—Western Shore Lumber Company.
 2. Address—4 Montgomery Street, San Francisco, California.
 3. Name of parent company, if any..... (District filed.....)
 4. Name of subsidiary, if any..... No. shares held..... (District filed.....)
- (If more than one, attach list and state number of shares held by parent; also districts where filed)
5. Nature of business in detail Lumber (Timber stumpage)
 6. Incorporated or organized in State of California Month November Day Year 1905
 7. Was a capital-stock tax return filed for the preceding taxable year ended June 30, 1935? If filed under a different name, state the name..... (District filed First Calif)
 8. Declared value of entire capital stock..... \$1,000,000.00.

(The value declared must be definite and unqualified. A value must be declared in every case regardless of whether exemption from the tax is claimed. See instructions 1 and 2.)

9. Exemptions.—The Act provides for an exemption from the tax only on the grounds indicated below. Corporations claiming exemption must (1) declare a value for the capital stock under item 8, (2) check the appropriate block under item 9 showing the basis of the claim, and (3) submit with the return a full statement of the evidence specified under the block checked.

Corporation exempt from income tax under section 101, Revenue Act of 1934. (1) State under which subsection of section 101.....

(2) Furnish information required by instruction 4.

Insurance company subject to tax under section 201, 204, or 207, Revenue Act of 1934. State which section.....

Corporation not doing business. (1) Furnish information required by instruction 6. (2) Declare value of capital stock in item 8 above.

Computation of Tax

	For Use of Taxpayer	For Use of Department
10. Declared value (must be identical figure entered in item 8).....	\$1,000,000.00	\$.....
11. Tax at rate of \$1.40 for each full \$1,000 in item 8.....	1,000.00	.....
12. Penalty for delinquency in filing returns (see inst. 7).....	—	.....
13. Interest at 6 percent per annum beginning August 1, 1936.....	8.33	.....
14. Total tax, penalty, and interest..\$	1,008.33	.....
15. State amounts of outstanding capital stock and surplus as of date of the close of income-tax taxable year used in declaring value for capital stock. (If nonstock organization, so indicate and attach statement of net worth.)		

	Number of Shares	Par (Stated) Value per Share	Totals
Capital stock: Preferred.....			
Common.....	10,000	100.00	1,000,000.00
Capital or paid-in surplus.....	x x	x x	—
Surplus reserves	x x	x x	—
Surplus and undivided profits....	x x	x x	450,192.12

We, the undersigned Percy A. Wood, President and Myra Lane, Secretary, of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return, including any accompanying statements, has been examined by him and is, to the best of his knowledge and belief, a true and complete return, made in good faith, for the taxable year stated,

pursuant to the Revenue Act of 1935 and the Regulations issued thereunder.

[Corporate Seal]

PERCY A. WOOD,
President

.....

Secretary

Sworn to and subscribed before me this day
of September, 1936.

[Notarial Seal]

.....

(Name)

.....

(Official capacity of officer administering oath) [11]

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
San Francisco, Calif.

Jul 39, 1936

[Seal]

Office of the Collector First District of California
In replying refer to
Western Shore Lumber Co.,
4 Montgomery St.,
San Francisco Calif.

Receipt is acknowledged of your application dated
29 July 1936 requesting for the reasons therein given
an extension of time within which to file your capital
stock tax return for the year ending June 30,

1936. In no case can an extension be granted beyond September 29, 1936.

You are hereby granted an extension of time to Sep 29 1936 within which to file your return and make payment of the tax shown thereon to be due.

In all cases where an extension of time is granted interest is collectible at the rate of one-half of one per cent a month from the due date, July 31, 1936, up to and including the date of payment.

This letter, or a copy thereof, must be attached to the return when filed as authority for the extension of time herein granted.

Respectfully,

GUY T. HELVERING,

Commissioner.

By JOHN V. LEWIS

Collector

TJC/om GMA [12]

EXHIBIT B-1

To Be Filed in Duplicate

Form 843

Treasury Department

Internal Revenue Service

Revised June 1930

CLAIM

To Be Filed With the Collector Where Assessment
Was Made or Tax Paid

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

Exhibit B-1 (Continued)

☐ Refund of Tax Illegally Collected.☐ Refund of Amount Paid for Stamps Unused,
or Used in Error or Excess.☐ Abatement of Tax Assessed (not applicable to
estate or income taxes).

Collector's Stamp (Date received)

State of California

City and County of San Francisco—ss.

Type or Print

Name of taxpayer or purchaser of stamps—West-
ern Shore Lumber Company.Business address—403 Merchants Exchange
Building, San Francisco, California.

Residence—

The deponent, being duly sworn according to law,
deposes and says that this statement is made on be-
half of the taxpayer named, and that the facts given
below are true and complete:

1. District in which return (if any) was filed—
First District, California.

2. Period (if for income tax, make separate form
for each taxable year)—Year ending June 30, 1933.

3. Character of assessment or tax—Capital stock
tax.

4. Amount of assessment, \$1,250; dates of pay-
ment—August 29, 1933.

5. Date stamps were purchased from the Govern-
ment—

6. Amount to be refunded—\$1250 with interest
thereon at the rate of 6%.

Exhibit B-1 (Continued)

7. Amount to be abated (not applicable to income or estate taxes)—

8. The time within which this claim may be legally filed does not expire prior to August 29, 1937 (See Revised Stats. Sec. 3228, as amended.)

The deponent verily believes that this claim should be allowed for the following reasons:

(For statement of grounds for refund, see pages attached hereto and hereby made a part hereof.)

(Attach letter-size sheets if space is not sufficient)

WESTERN SHORE LUMBER
COMPANY

(Signed) By FRANK C. NELSON

Secretary

Sworn to and subscribed before me this 27th day of August 1937.

[Seal] FRANK L. OWEN

Notary Public in & for the city & county of San Francisco, State of California. [13]

(See instructions on reverse side)

CERTIFICATE

I certify that an examination of the records of this office shows the following facts as to the assessment and payment of the tax: Character of assessment and period covered, List, Year, Month Account No. or Page Line Amount assessed \$----- Total, \$-----.

Paid, Abated, or Credited Dated, Amount, Total, \$-----.

Claim No.-----.

I certify that the records of this office show the

Exhibit B-1 (Continued)

following facts as to the purchase of stamps: To Whom Sold or Issued, Kind, Number, Denomination, Date of sale or issue, Amount \$-----.

If special tax stamp, state: Serial number, Period commencing.

Collector of Internal Revenue.

----- (District)

Claim examined by-----.

Claim approved by----- Chief of Division.

Amount claimed-- \$-----.

Amount allowed-- \$-----.

Amount rejected--\$-----.

COMMITTEE ON CLAIMS

INSTRUCTIONS

1. The claim must set forth in detail and under oath each ground upon which it is made, and facts sufficient to apprise the Commissioner of the exact basis thereof.

2. The claim should be sworn to by the taxpayer, if possible. Whenever it is necessary to have the claim executed by an attorney or agent, on behalf of the taxpayer, an authenticated copy of the document specifically authorizing such agent or attorney to sign the claim on behalf of the taxpayer shall accompany the claim. The oath will be administered without charge by any collector, deputy collector, or internal revenue agent.

Exhibit B-1 (Continued)

3. If a return is filed by an individual and a refund claim is thereafter filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made on the claim showing that the return was filed by the fiduciary and that the latter is still acting.

4. Where the taxpayer is a corporation, the claim shall be signed with the corporate name, followed by the signature and title of the officer having authority to sign for the corporation.

FACTS

The Western Shore Lumber Company, a corporation organized and existing under and by virtue of the laws of the State of California, hereinafter called the taxpayer, has paid to the Collector of Internal Revenue at San Francisco, California, certain amounts constituting capital stock tax assessed against the taxpayer, in the amounts and for the years herein indicated, to wit:

Exhibit B-1 (Continued)

Date of Assessment	Date of Payment	Amount
June 30, 1933	August 29, 1933.....	\$1,250.00
June 30, 1934	August 31, 1934.....	25.00
June 30, 1935	July 31, 1935.....	24.00
June 30, 1936	September 18, 1936.....	1,000.00

The payment of these taxes by the taxpayer constituted capital stock tax assessed for the years 1933, 1934, 1935 and 1936, paid as set forth above.

All of said taxes were paid through inadvertence and without the knowledge of the taxpayer's rights in the premises and should be refunded for the reason that the taxpayer was not at any time during the period from July 1, 1932 to June 30, 1936 and is not now carrying on or doing business. The sole function of this corporation [14] then was and continues to be the holding of its assets until such time as the same can be satisfactorily liquidated and distributing the proceeds currently received on account of such assets. Under the Regulations of the Bureau of Internal Revenue, as then and now in effect, a corporation whose sole activities are limited to the distribution of the avails of property and the doing only of such acts as may be necessary for the maintenance of its corporate status in a case in which the corporation has reduced its activities to the mere owning and holding of specific property is not subject to the capital stock tax.

The taxpayer has neither done nor attempted to do any business whatsoever since early in 1922, at which time a mill erected in 1917 was shut down and has not since been operated. In this connection it is to be noted that the taxpayer has filed refund claims

Exhibit B-1 (Continued)

for capital stock taxes paid for the years from 1923 to 1928, which refund claims were allowed by the Bureau of Internal Revenue and paid to the taxpayer.

The taxpayer has itself engaged in no timber operations since 1917, with the exception of a small stumpage which was cut in 1920. The only receipts of the taxpayer for the period from July 1, 1932 to June 30, 1936, were interest on bank accounts and receipts on account of [15] a stumpage contract under which the taxpayer liquidated certain of its timber holdings and receipts in the total amount of \$208.08 on account of the sale of equipment and junk. A copy of this stumpage contract is attached hereto as are detailed statements of the cash receipts and disbursements of the taxpayer for each of the taxable years in question. There is also attached hereto a copy of the minutes of all meetings of the Board of Directors during the period from July 1, 1932 to June 30, 1936.

The taxpayer now has and during this period had no employees other than a secretary and it has performed no corporate acts other than the payment of taxes and the management of affairs purely internal in character necessary to the preservation of its charter. A copy of the taxpayer's article of incorporation has heretofore been supplied to the Commissioner of Internal Revenue in connection with the above mentioned claims of the taxpayer for refund of previous capital stock taxes. We refer you to your file Nos. Misc. TJO'N ; 114 and MT-M-JH Claim No. 3-R2646.

Exhibit B-1 (Continued)

The taxpayer has neither acquired nor sold any property during the period herein mentioned and has paid no dividends to any stockholders.

No corporate functions set forth in its articles of incorporation as to business purposes have been performed. [16] It is not necessary under the law of California to amend the articles of incorporation when a corporation ceases to carry on operations.

The taxpayer merely owns and holds approximately 13,000 acres of timber land in San Mateo County, California, and approximately 550 acres in Santa Cruz County, California.

The taxpayer has not during the period here mentioned and does not now own any stock of other corporations nor is it nor has it been affiliated with any other corporation.

It is therefore submitted that the taxpayer has not carried on or done business during any of the taxable years herein mentioned and that accordingly the taxpayer is not and was not subject to capital stock tax for the years ending June 30, 1933, June 30, 1934, June 30, 1935 and June 30, 1936.

The taxpayer comes squarely within the holding of the United States District Court in

Clallam Lumber Co. v. United States, 34 Fed. (2d) 947 (1929).

In that case a corporation whose sole function was the holding of timber lands for sale as soon as a fair price could be obtained was held to be not subject to the capital stock tax imposed by the Revenue Act of 1924, although the taxpayer had entered into a logging contract [17] requiring the vendee to cut

Exhibit B-1 (Continued)

and remove merchantable timber and had entered into an agreement for the construction and operation of a private logging railroad for the purpose of making its timber salable. The activities of the taxpayer in that case were considerably more extensive than the activities of the taxpayer in the present case and the logging contract was substantially similar to the stumpage contract of the petitioning taxpayer with the Santa Cruz Lumber Co.

The taxpayer's exemption is also supported by the holding of the Circuit Court of Appeals for the Fifth Circuit in

Lane Lumber Company v. Hynson, 4 Fed. (2d) 666 (1925),

where the charter of the company, as in the present situation, allowed broad powers to hold, lease and sell real and personal property and to buy, sell, hold and lease real estate, timber, logs, stumpage and building materials. During the tax period in question, however, the company had ceased to do any lumbering or lumber business. It did, however, appoint agents to attempt to sell its lands, pay taxes and continue to hold title to its lands. The court held it was not subject to the capital stock tax imposed under the Revenue Act of 1919.

See also the case of

United States v. Hotchkiss Redwood Co., 25 Fed. (2d) 958, [18]

and

Cannon v. Elk Creek Lumber Company and
Cannon v. Siuslaw Lumber Company, 8 Fed. (2d) 996,

Exhibit B-1 (Continued)

in which the court held that corporations which merely own and hold tracts of timber land engaged only in activities incident to the ownership of such property are not carrying on or doing business within the meaning of the provisions imposing the capital stock tax.

Therefore, on the basis of the facts hereinabove set forth and in the light of the above authorities, the taxpayer respectfully submits that it is entitled to refund in the amounts of \$1250, \$25.00, \$24.00 and \$1000 for capital stock taxes for the taxable years ending June 30, 1933, June 30, 1934, June 30, 1935 and June 30, 1936. [19]

WESTERN SHORE LUMBER COMPANY
CASH RECEIPTS AND DISBURSEMENTS

July 1, 1932 to June 30, 1933

Receipts

Receipts under Stumpage Contract with Santa Cruz Lumber Co.	\$21,206.70
Interest on Bank Accounts.....	451.44
Savings Account	257.28
Commercial Account	194.16
	<hr/>
Total Receipts	21,658.14
	<hr/>

Disbursements

Taxes	6,024.75
Timber Lands	5,998.47
San Mateo County.....	5,634.20
Santa Clara County.....	364.27
	<hr/>
State Franchise Tax.....	25.00
Federal Check	1.28
	<hr/>

Exhibit B-1 (Continued)

Disbursements—(Continued)

Interest on Loans.....		4,011.05
Trail Maintenance		1,650.00
Secretarial Expense		550.00
General Expenses		364.60
Office Rent	275.00	
Accounting Services	60.00	
Repairs	18.20	
Rent—Safe Deposit Box.....	8.80	
Miscellaneous	2.60	
		<hr/>
		12,600.40
Excess Receipts Over Disbursements.....		9,057.74
Balance Cash July 1, 1932.....		26,617.00
The Bank of California, N. A.—		
Savings Account	7,853.12	
The Bank of California, N. A.—		
Commercial Account	18,763.88	
		<hr/>
Balance Cash June 30, 1933.....		35,674.74
Wells Fargo Bank & Union Trust Co.—		
Savings Account	33,592.86	
Wells Fargo Bank & Union Trust Co.—		
Commercial Account	2,081.88	
		<hr/>
		[20]

No Minutes of Meetings of Board of Directors
for Year

July 1, 1932 to June 30, 1933 [21]

Exhibit B-1 (Continued)

WESTERN SHORE LUMBER COMPANY

San Francisco, California

BALANCE SHEETS

Assets		
	Jan. 1-32	Dec. 31-32
Cash	\$ 30,912.46	36,458.26
Timber	1,503,853.36	1,491,412.71
Real Estate	66,195.55	66,195.55
Buildings	1,250.98	1,250.98
Total	<u>1,602,212.35</u>	<u>1,595,317.50</u>
Liabilities		
Deposit on Stumpage.....	40,000.00	40,000.00
Stockholders' Loans	66,850.75	66,850.75
Common Capital Stock.....	1,000,000.00	1,000,000.00
Surplus & Appreciation Reserves..	495,361.60	488,466.75
Total	<u>1,602,212.35</u>	<u>1,595,317.50</u>

[22]

This Agreement, made and entered into this 23d day of April, 1929, by and between Western Shore Lumber Company, a corporation, organized and existing under and by virtue of the laws of the State of California, first party, and Santa Cruz Lumber Company, a corporation, organized and existing under and by virtue of the laws of the State of California, second party,

Witnesseth:

That, Whereas, first party is the owner of the following described timber lands, to-wit:

All those certain lots, pieces or parcels of land situate, lying and being in the County of San Mateo, State of California, and more

Exhibit B-1 (Continued)

particularly described as follows, to-wit:

The East one-half ($E\frac{1}{2}$) and the East one-half ($E\frac{1}{2}$) of the West one-half ($W\frac{1}{2}$) of Section 22, Township 8 South, Range 3 West M.D.B. & M.

and

Whereas, second party desires to acquire the right to cut, fell and remove the redwood and pine timber and the tanbark on said timber lands as hereinbefore provided;

Now, Therefore, in consideration of the premises and of the sum of ten thousand (10,000) dollars in cash to first party in hand paid by second party concurrently with the execution of these presents, the parties hereto hereby mutually agree as follows:

(1) Second party shall have the right to cut, fell, and remove from the timber lands hereinabove particularly described, all the redwood and pine timber and tanbark [23] which it may desire to take growing, standing or being on said lands for the price and prices hereinafter provided; and for the purpose of cutting, felling and removing said timber and tanbark as hereinabove provided, second party shall have possession of said lands for the term hereinafter provided and shall have the right during such term to cut out and construct roads over and cross the same, and to have free ingress and egress for employees, teams, and vehicles into, upon and from the said timber lands.

(2) The price or prices payable by second party to the first party for the right to cut, fell and

Exhibit B-1 (Continued)

remove said timber and tanbark shall be the following:

(a) The said sum of ten thousand (10,000) dollars paid concurrently with the execution of these presents as hereinbefore recited, which amount shall be considered as having become due to first party regardless of the amount of timber and tanbark cut, felled or removed by the second party.

(b) An amount based upon the timber and tanbark cut, felled and/or removed by second party at the rate of four (4.00) dollars per thousand feet, board measure, in the case of redwood and pine timber, and at the rate of five (5.00) dollars per cord in the case of tanbark, provided, that there shall be credited against amounts due on account of said timber and tanbark the full amount of ten thousand (10,000) dollars above mentioned, and no payments shall be made by the second party to the first party under this subdivision (b) until the amounts determined at the rates in this subdivision provided shall aggregate more than ten thousand (10,000) dollars; all ex- [24] cess amounts shall be payable to the first party monthly on the first day of each and every month.

(3) The determination of the number of thousand feet, board measure, of redwood and pine timber cut, felled and removed by the second party shall be made by a tally at the tail end of the mill of second party. If first party shall so elect, said tally shall be made by a tallyman mutually agreed upon by the parties, or appointed by the first party,

Exhibit B-1 (Continued)

and the expense of the employment of such tallyman for the purpose of the tally shall be divided equally between the parties. The determination of the amount of tanbark cut by second party shall be made prior to its removal from said timber lands of first party, and if first party shall so elect, shall be made by a person agreed upon between the parties or appointed by first party, and the expense of the employment of such person for such purpose shall be borne equally by the parties.

(4) First party shall have the right at any time through its officers, agents or representatives to inspect the operations of the second party on the said timber lands and the method of tallying hereinabove provided for. First party shall also have the right at any time through its officers, agents or representatives to examine the books of account of second party and all other records of second party covering the operations of said second party on the said timber lands of first party.

(5) The second party shall from and after the date of this agreement proceed continuously with the cutting, felling and removing of said timber and tanbark from the lands herein described, and shall complete the same within [25] a period of two years from the date hereof. Upon the expiration of the said two years from the date hereof, all further rights of said second party in and to said timber and tanbark on the lands of the first party, and all rights of the second party in and to said lands and to ingress and egress therefrom shall cease and de-

Exhibit B-1 (Continued)

termine, and the first party shall have the exclusive right and possession of same and of any timber or tanbark remaining thereon.

(6) The legal title to all timber and tanbark upon the lands of the first party, covered by this agreement, shall remain in first party until the same be cut, felled and removed by second party and after such cutting, felling and removal, the legal title to and the right of possession of the same and of any lumber manufactured therefrom shall be and remain in the first party as security for any portion of the purchase price hereinabove provided which may then remain due and unpaid until the same shall have been fully paid; and second party agrees at all times to keep on hand a sufficient quantity of said timber, tanbark and lumber separately piled to secure the balance owing, if any, to first party; and in case of default by second party in making any of the payments hereunder and in performing any of the conditions hereof, first party shall, in addition to other rights in such case provided, have the right to take immediate possession of said timber, tanbark and lumber, and to sell and dispose of same at public or private sale, without notice to the second party, for the purpose of satisfying the balance due under this contract and all costs and expenses in taking, keeping and [26] disposing of said property.

(7) Second party agrees to so conduct its operations upon said lands above described as not to damage unnecessarily any young growth or trees left

Exhibit B-1 (Continued)

standing by second party, and not to damage in any way any buildings or improvements on said lands.

(8) All slash and cuttings resulting from operations of second party on the lands herein described may be sold by first party for fuel, or other purposes, if first party so elects, but if first party does not so elect, second party agrees to either remove the same or to destroy the same by burning during the rainy season when no danger of forest fire will result.

(9) Second party agrees to indemnify and to save and hold first party harmless of and from any and all liens and claims whatsoever arising from its operations on said lands of first party. Second party further agrees that first party shall not be liable or responsible for any accidents, loss, injury, or damage happening, accruing, or in connection with, or anywise arising out of the work herein referred to, or any of the operations of second party hereunder to persons and/or property (whether employed upon or utilized in said work, or otherwise, and including the death of any persons) and second party agrees to fully indemnify and save and hold first party harmless of, from and against the same and any and all liability, expenses (including attorneys' fees) payments, claims and/or liens whatsoever therefor.

(10) During the term of this agreement second party agrees to do all in its power to prevent and suppress fires [27] on the lands hereinabove described and in the vicinity and to acquire its em-

Exhibit B-1 (Continued)

ployees to do likewise. In the event that any fire shall start on the lands above described, or in its vicinity, second party agrees to place all its employees in that logging area to work in fighting such fire and to keep them constantly and continuously at work fighting such fire until it shall be extinguished.

(11) No assignment of this agreement shall be made by second party either voluntarily or by operation of law, proceedings in bankruptcy, or otherwise, without the written consent of the first party and any such attempted assignment without such written consent shall be null and void.

(12) In the event that second party shall make default in the payment of any amount due under this contract, as hereinabove provided, or in the performance or observance of the terms, conditions and agreement herein contained on its part to be performed or observed, first party may at its option treat this agreement as terminated without notice of said option given to second party, and thereupon this agreement shall become null and void, and the rights of second party shall come to an end, and second party shall have no further right, title and interest, claim or demand whatsoever, under or by virtue of this agreement in or to the timber lands hereinabove described, or the timber or tanbark thereon, or in or to said sum of ten thousand (10,000) dollars paid concurrently herewith, or in or to any further payments theretofore made by second party to first party, but said sum

Exhibit B-1 (Continued)

or sums shall [28] be retained by and shall belong to first party as liquidated and agreed damages and not as a penalty. Nothing herein contained shall be construed as depriving first party of any right to further damages or to any other right or remedy to which it may be entitled at law or in equity on the happening of such default.

(13) Time is of the essence of this agreement.

(14) Subject to the provisions of paragraph (11) above, this agreement shall bind and inure to the benefit of the successors and assigns of the respective parties hereto.

In Witness Whereof the parties have caused their respective corporate names to be hereunto subscribed and their respective seals to be hereunto affixed by their respective officers thereunto duly authorized, all in duplicate, the day and year first above written.

[Corporate Seal]

WESTERN SHORE LUMBER
COMPANY,

By TIMOTHY HOPKINS,

Pres.

By WALTER L. DEAN,

Secretary.

[Corporate Seal]

SANTA CRUZ LUMBER
COMPANY,

By GEORGE M. LEY,

Treas.

By JAS. M. MADDOCK,

Secty. [29]

EXHIBIT B-2

(To Be Filed in Duplicate)

Form 843

Treasury Department
Internal Revenue Service
Revised June 1930

CLAIM

To Be Filed With the Collector Where Assessment
Was Made or Tax Paid

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

- ☐ Refund of Tax Illegally Collected.
- ☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- ☐ Abatement of Tax Assessed (not applicable to estate or income taxes).

Collector's Stamp (Date received)

State of California,
City and County of San Francisco—ss.

Type or Print.

Name of taxpayer or purchaser of stamps, Western Shore Lumber Company.

Business address, 403 Merchants Exchange Building, San Francisco, Calif.

Residence

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

Exhibit B-2 (Continued)

1. District in which return (if any) was filed, First District, California.

2. Period (if for income tax, make separate form for each taxable year) Year ending June 30, 1934.

3. Character of assessment or tax, Capital stock tax.

4. Amount of assessment, \$25.00; dates of payment, August 31, 1934.

5. Date stamps were purchased from the Government

6. Amount to be refunded, \$25 with interest thereon at the rate of 6%.

7. Amount to be abated (not applicable to income or estate taxes)

8. The time within which this claim may be legally filed does not expire prior to August 31, 1938. (See Revised Stats. Sec. 3228, as amended.)

The deponent verily believes that this claim should be allowed for the following reasons:

(For statement of grounds for refund, see pages attached hereto and hereby made a part hereof.)

(Attach letter-size sheets if space is not sufficient)

WESTERN SHORE LUMBER
COMPANY,

[Signed] By FRANK C. NELSON,
Secretary.

Exhibit B-2 (Continued)

Sworn to and subscribed before me this 27th day
of August, 1937.

[Notarial Seal]

FRANK L. OWEN,

Notary Public in and for the
City and County of San
Francisco, State of Cali-
fornia.

(See Instructions on Reverse Side)

[30]

CERTIFICATE

I certify that an examination of the records of
this office shows the following facts as to the assess-
ment and payment of the tax: Character of assess-
ment and period covered, List, Year, Month, Ac-
count No. or Page, Line, Amount assessed, \$.....
Total, \$.....

Paid, Abated, or Credited, Date, Amount, \$.....
Total, \$.....

Claim No.

I certify that the records of this office show the
following facts as to the purchase of stamps: To
Whom Sold or Issued, Kind, Number, Denomina-
tion, Date of sale or issue, Amount, \$.....

If special tax stamp, state: Serial number, Period
commencing.

.....,
Collector of Internal Revenue. (District)

Exhibit B-2 (Continued)

Claim examined by—.....

Claim approved by—.....

Chief of Division.

COMMITTEE ON CLAIMS

.....

Amount claimed... \$.....

Amount allowed... \$.....

Amount rejected... \$.....

INSTRUCTIONS

1. The claim must set forth in detail and under oath each ground upon which it is made, and facts sufficient to apprise the Commissioner of the exact basis thereof.

2. The claim should be sworn to by the taxpayer, if possible. Whenever it is necessary to have the claim executed by an attorney or agent, on behalf of the taxpayer, an authenticated copy of the document specifically authorizing such agent or attorney to sign the claim on behalf of the taxpayer shall accompany the claim. The oath will be administered without charge by any collector, deputy collector, or internal revenue agent.

3. If a return is filed by an individual and a refund claim is thereafter filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to

Exhibit B-2 (Continued)

show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made on the claim showing that the return was filed by the fiduciary and that the latter is still acting.

4. Where the taxpayer is a corporation, the claim shall be signed with the corporate name, followed by the signature and title of the officer having authority to sign for the corporation.

[On the original there is here inserted a copy of Statement of Facts. Copy of this Statement of Facts appears in the Claim for Refund for the year 1933.] [31]

WESTERN SHORE LUMBER COMPANY
CASH RECEIPTS AND DISBURSEMENTS

July 1, 1933 to June 30, 1934

Receipts

Receipts under Stumpage Contract with Santa Cruz Lumber Co.....	\$32,372.78
Interest—Special Savings Account with Wells Fargo Bank & Union Trust Company.....	841.56
Total Receipts	<hr/> 33,214.34 <hr/>

Exhibit B-2 (Continued)

Disbursements

Payment on Principal of Outstanding Loans.....		13,821.89
Interest on Loans.....		5,613.73
Taxes		5,610.86
Timber Lands	4,334.58	
San Mateo County.....	4,042.17	
Santa Cruz County.....	292.41	
	<hr/>	
Federal Capital Stock.....	1,250.00	
State Franchise	25.00	
Federal Check	1.28	
	<hr/>	
Trail Maintenance		1,800.00
Secretarial Expense		275.00
General Expenses		364.94
Office Rent	275.00	
Tax Preparation	25.00	
Miscellaneous	7.94	
Insurance	57.00	
	<hr/>	
Total Disbursements		27,486.42
		<hr/>
Excess Receipts Over Disbursements.....		5,727.92
Balance Cash July 1, 1933.....		35,674.74
Wells Fargo Bank & Union Trust Co.—		
Savings Account	33,592.86	
Wells Fargo Bank & Union Trust Co.—		
Commercial Account	2,081.88	
	<hr/>	
Balance Cash June 30, 1934.....		41,402.66
Wells Fargo Bank & Union Trust Co.—		
Savings Account	34,434.42	
Wells Fargo Bank & Union Trust Co.—		
Commercial Account	6,968.24	
	<hr/>	

Exhibit B-2 (Continued)

WESTERN SHORE LUMBER COMPANY

Copies of Minutes of Meetings of Board of
Directors, July 1, 1933 to June 30, 1934

Minutes of Special Meeting of Board of Directors
of

WESTERN SHORE LUMBER COMPANY

Pursuant to call and notice by the President, as provided in the by-laws, a special meeting of the Board of Directors of Western Shore Lumber Company, a California corporation, was held at the office of the corporation at Room 905, Kohl Building, San Francisco, California, on Wednesday, the 5th day of July, 1933, at the hour of 11:00 o'clock A. M. of said day. The following Directors were present, constituting a quorum:

Timothy Hopkins
Andrew Thorne
Percy A. Wood.

President Hopkins presided and on motion duly made, seconded and adopted, Mr. Wood was appointed Secretary of the meeting, and thereafter acted as Secretary.

The President's call and notice of the meeting was presented and, on motion duly made and seconded, was made a part of the records of the meeting. Said call and notice is as follows:

Exhibit B-2 (Continued)

Call and Notice of Special Meeting of Board of Directors of Western Shore Lumber Company.

The undersigned, President of Western Shore Lumber Company, hereby calls a special meeting of the Board of Directors of said corporation to be held at its office, Room 905 Kohl Building, San Francisco, California, on Wednesday, the 5th day of July, 1933, at 11:00 o'clock A. M., for the purpose of considering and acting upon any and all business which may come before the said meeting.

Because the office of Secretary of the corporation is vacant, the undersigned also hereby gives notice that said special meeting of the Board of Directors has been called to be held and will be held at the said time and place for the purpose above mentioned.

[Signed] TIMOTHY HOPKINS,
President of Western Shore
Lumber Company.

Dated at San Francisco, California, June 30, 1933. [33]

The President stated that because the office of Secretary had been vacant he had himself given notice of the meeting in accordance with the by-laws by depositing, with postage thereon prepaid, in the United States mail at San Francisco, California, a counterpart of the said call and notice of the meeting addressed to each Director at his place of business or residence at least thirty-six hours before the time fixed for the holding of the meeting, namely on the 30th day of June, 1933.

Exhibit B-2 (Continued)

The President reported to the Board the death of Mr. Walter L. Dean, who for many years had been Director, Secretary and Treasurer of the corporation. On motion duly made, seconded and carried, it was resolved that the President, on behalf of the corporation, express to Mrs. Walter L. Dean the sympathy of the Board and its appreciation of the long and faithful service of Mr. Dean as Officer and Director.

The President thereupon called for nominations for the office of Secretary left vacant by the death of Mr. Dean. Miss Myra Lane was thereupon nominated as Secretary and there being no further nominations, on motion duly made and seconded, the nominations were declared closed. An election by ballot was thereupon held in which Miss Lane received the vote of all Directors present. The President thereupon declared that Miss Myra Lane was elected Secretary of the corporation. She was not present at the meeting and accordingly Mr. Wood continued to act as Secretary of the meeting.

On motion duly made and seconded, the following resolution was adopted by the vote of all Directors present:

Resolved, that the Secretary of this corporation shall receive and be paid a salary of \$25.00 per month and that the officers of this corporation authorized to sign checks be and they are hereby authorized and empowered to pay said salary to the Secretary monthly hereafter until further order of the Board of Directors.

Exhibit B-2 (Continued)

It was decided not to fill at this time the vacancy in the Board of Directors or in the office of Treasurer created by Mr. Dean's death and no action was taken to this end.

The President then stated that he considered it advisable to provide for banking arrangements for the corporation at Wells Fargo Bank and Union Trust Co. Thereupon, on motion duly made and seconded, the following resolutions were adopted by the vote of all Directors present:

Resolved, that Wells Fargo Bank & Union Trust Co. be and it is hereby selected as a depository for the funds of this corporation and that said funds shall be withdrawn from said depository on the check of this corporation signed by either Timothy Hopkins, the President of this corporation, alone, or A. Crawford Greene, the Vice President of this corporation, alone, or Percy A. Wood, Director of this corporation, and Myra Lane, Secretary of this corporation, together; and

Further Resolved, that any one of said four officers above named individually be and he is hereby authorized for and on behalf of and in the name of this corporation [34] to endorse and to deliver to said depository for any purpose and to any amount commercial paper of any kind, negotiable or non-negotiable, executed by others and owned or held by or payable to this corporation; and

Exhibit B-2 (Continued)

Further Resolved, that the authority hereby conferred shall continue in force until notice of its revocation in writing shall have been given to the said depository.

On motion duly made and seconded, the following resolution was adopted by the vote of all Directors present:

Resolved, that this corporation do rent a safe in the safe deposit vault of Wells Fargo Bank & Union Trust Co., San Francisco, California, and that either Timothy Hopkins, the President of this corporation, alone, or A. Crawford Greene, the Vice President of this corporation, alone, or Percy A. Wood, Director of this corporation, and Myra Lane, Secretary of this corporation, together, be and is or are hereby authorized to have access to said safe and to receive and receipt for any special deposits which this corporation may at any time have on deposit with said Wells Fargo Bank & Union Trust Co. safe deposit vaults until advice to the contrary in writing be received by said Wells Fargo Bank & Union Trust Co.

On motion duly made and seconded, the following resolution was adopted by the vote of all Directors present:

Resolved, that the President be and he is hereby authorized and empowered to employ auditors to audit the books and records of the corporation.

Exhibit B-2 (Continued)

Director Wood then offered the following resolutions:

Whereas, various stockholders of this corporation and other parties have advanced and loaned moneys to this corporation between the 7th day of April, 1913, and the date of this resolution, the names of such parties and the original amounts loaned by them being as follows, to wit:

Name	Amounts Advanced
W. E. Dean.....	\$14,833.50
Henry L. Middleton.....	1,658.50

And Whereas, this corporation has agreed to repay the said advances and loans, but the said advances and loans have not, nor has any part thereof, been repaid; and

Whereas, this corporation has agreed to pay interest on said amounts at the rate of six per cent per [35] annum from the date of the respective times when the same were advanced, and a portion of said interest, but not all thereof, has heretofore been paid; and

Whereas, all or portions of said indebtedness may become barred by the statute of limitations of the State of California, or the parties who loaned said amounts, their heirs, representatives, successors or assigns, may take action against the corporation to prevent the said amounts being barred by the said statute of limitations; and

Exhibit B-2 (Continued)

Whereas, it is the judgment of this Board of Directors that the said amounts of indebtedness and the whole thereof should be recognized by this corporation and appropriate documents executed by it and delivered to the proper parties acknowledging the respective amounts of said indebtedness due to them and agreeing to pay the same with unpaid interest thereon as aforesaid and waiving the provisions of the said statute of limitations;

Now, Therefore, Be It Resolved: That this corporation hereby acknowledges the existence of its aforesaid indebtedness and the respective amounts thereof hereinbefore recited as owing to the parties hereinbefore named, their heirs, representatives, successors or assigns, and that this corporation hereby agrees to pay the said respective amounts thereof, together with interest on such amounts at the rate of six per cent per annum from the dates upon which the respective amounts so advanced and loaned by said persons were received by this corporation as disclosed by its books, less such amount of interest as has heretofore been paid thereon; and

Be It Further Resolved, that the President or Vice President and Secretary of this corporation be, and they are hereby authorized and directed, for and on behalf of this corporation and as its corporate act and deed, to forward to each of said parties who loaned said money

Exhibit B-2 (Continued)

or their respective heirs, representatives, successors or assigns, a certified copy of this resolution, together with a letter signed by this corporation acknowledging the existence as of the date of this meeting, of the said indebtedness and of the said respective amounts thereof, together with interest thereon as hereinbefore in the preceding resolution set forth.

After discussion, upon motion duly made and seconded, the said resolutions last hereinbefore set forth were unanimously adopted by the vote of all Directors present.

(Thereupon Director Thorne offered the following resolutions:) [36]

Whereas, the Felton Company has advanced and loaned monies to this corporation at various times and in various amounts, between the 7th day of April, 1913, and the date of this resolution, the total amount of said original advances being \$14,833.50; and

Whereas, this corporation has agreed to repay the said advances and the same have not, nor has any part thereof, been paid; and

Whereas, this corporation has agreed to pay interest on said amounts constituting said total of \$14,833.50 at the rate of six per cent per annum from the date of the respective times when the same were advanced and a portion of said interest, but not all thereof, has heretofore been paid; and

Exhibit B-2 (Continued)

Whereas, all or portions of said indebtedness may become barred by the statute of limitations of the State of California or said The Felton Company may take action against the corporation to prevent the said amounts being barred by the said statute of limitations; and

Whereas, it is the judgment of this Board of Directors that the said amounts of indebtedness and the whole thereof should be recognized by this corporation and appropriate documents executed by it and delivered to said The Felton Company acknowledging the total amount of said indebtedness due to it and agreeing to pay the same with unpaid interest as aforesaid and waiving the provisions of the said statute of limitations;

Now, Therefore, Be It Resolved: That this corporation acknowledges the existence of its aforesaid indebtedness to The Felton Company aggregating in the principal amount the sum of \$14,833.50 and that this corporation agrees to pay the same, together with interest thereon at the rate of six per cent per annum from the dates upon which the respective amounts thereof so advanced by said The Felton Company were received by this corporation as disclosed by its books, less such amount of interest as has heretofore been paid thereon; and

Be It Further Resolved, that the President and Secretary of this corporation be and they are hereby authorized and directed for and on

Exhibit B-2 (Continued)

behalf of this corporation and as its corporate act and deed to forward to the said The Felton Company a certified copy of this resolution, together with a letter signed by this corporation acknowledging the existence as of the date of this meeting of the said indebtedness aggregating \$14,833.50 together with interest thereon as hereinbefore in the preceding resolution set forth. [37]

Mr. Wood stated and disclosed that he was interested in the said resolutions through his representation of The Felton Company interests and requested the fact of such interest and of his participation to be noted in the minutes, and upon motion duly made, seconded and carried, it was ordered that this notation be made.

Thereupon on motion duly made and seconded, the said resolutions last hereinbefore set forth were unanimously adopted by the vote of all Directors present.

Thereupon Director Wood offered the following resolutions:

Whereas, W. S. Thorne, deceased, advanced and loaned monies to this corporation at various times and in various amounts, between the 7th day of April, 1913 and the date of this resolution, the total amount of said original advances being \$255.00; and

Whereas, this corporation has agreed to repay the said advances and the same have not, nor has any part thereof, been paid; and

Exhibit B-2 (Continued)

Whereas, this corporation has agreed to pay interest on said amounts constituting said total of \$255.00 at the rate of six per cent per annum from the date of the respective times when the same were advanced and a portion of said interest, but not all thereof, has heretofore been paid; and

Whereas, all or portions of said indebtedness may become barred by the statute of limitations of the State of California or the representative or representatives, assign or assigns, of said W. S. Thorne may take action against the corporation to prevent the said amounts being barred by the said statute of limitations; and

Whereas, it is the judgment of this board of directors that the said amounts of indebtedness and the whole thereof should be recognized by this corporation and appropriate documents executed by it and delivered to the proper persons acknowledging the total amount of said indebtedness due to said W. S. Thorne and agreeing to pay the same with unpaid interest as aforesaid and waiving the provisions of the said statute of limitations;

Now, Therefore, Be It Resolved: That this corporation acknowledges the existence of its aforesaid indebtedness to W. S. Thorne aggregating in the principal amount the sum of \$255.00 and that this corporation agrees to pay the same, together with interest thereon

Exhibit B-2 (Continued)

at the rate of six per cent per annum from the dates upon which the respective amounts thereof so advanced by said W. S. Thorne were received by this corporation as disclosed by its books, less such amount of interest as has heretofore been paid thereon; and

Be It Further Resolved, that the President or Vice President and Secretary of this corporation be and they are hereby authorized and directed for and on behalf of this corporation and as its corporate act and deed to forward to the representative or representatives, assign or assigns of said W. S. Thorne a certified copy of this resolution together with a letter signed by this corporation acknowledging the existence as of the date of this meeting of the said indebtedness aggregating \$255.00, together with interest thereon as hereinbefore in the preceding resolution set forth. [38]

Mr. Andrew Thorne stated and disclosed that he was interested in the said resolutions as one of the heirs of W. S. Thorne, deceased, and requested the fact of such interest and of his participation to be noted in the minutes, and upon motion duly made, seconded and carried, it was ordered that this notation be made.

Thereupon on motion duly made and seconded, the said resolutions last hereinbefore set forth were unanimously adopted by the vote of all Directors present.

Exhibit B-2 (Continued)

Director Andrew Thorne thereupon offered the following resolutions:

Whereas, Timothy Hopkins has advanced and loaned monies to this corporation at various times and in various amounts, between the 7th day of April, 1913, and the date of this resolution, the total amount of said original advances being \$35,270.25; and

Whereas, this corporation has agreed to repay the said advances and the same have not, nor has any part thereof, been paid; and

Whereas, this corporation has agreed to pay interest on said amounts constituting said total of \$35,270.25 at the rate of six per cent per annum from the date of the respective times when the same were advanced and a portion of said interest, but not all thereof, has heretofore been paid; and

Whereas, all or portions of said indebtedness may become barred by the statute of limitations of the State of California or said Timothy Hopkins may take action against the corporation to prevent the said amounts being barred by the said statute of limitations; and

Whereas, it is the judgment of this board of directors that the said amounts of indebtedness and the whole thereof should be recognized by this corporation and appropriate documents executed by it and delivered to said Timothy Hopkins acknowledging the total amount of said indebtedness due to him and agreeing to

Exhibit B-2 (Continued)

pay the same with unpaid interest as aforesaid and waiving the provisions of the said statute of limitations;

Now, Therefore, Be It Resolved: That this corporation acknowledges the existence of its aforesaid indebtedness to Timothy Hopkins aggregating in the principal amount the sum of \$35,270.25 and that this corporation agrees to pay the same, together with interest thereon at the rate of six per cent per annum from the dates upon which the respective amounts thereof so advanced by said Timothy Hopkins were received by this corporation as disclosed by its books, less such amount of interest as has heretofore been paid thereon; and [39]

Be It Further Resolved: That the Vice President and Secretary of this corporation be and they are hereby authorized and directed for and on behalf of this corporation and as its corporate act and deed to forward to the said Timothy Hopkins a certified copy of this resolution together with a letter signed by this corporation acknowledging the existence as of the date of this meeting of the said indebtedness aggregating \$35,270.25 together with interest thereon as hereinbefore in the preceding resolution set forth.

Mr. Hopkins stated and disclosed that he was interested in the said resolutions as the creditor therein named and requested the fact of such interest and of his participation to be noted in the

Exhibit B-2 (Continued)

minutes, and upon motion duly made, seconded and carried, it was ordered that this notation be made.

Thereupon on motion duly made and seconded, the said resolutions last hereinbefore set forth were unanimously adopted by the vote of all Directors present.

On motion duly made and seconded, the following resolutions were adopted by the vote of all Directors present:

Resolved, that the office of this corporation be and it is hereby changed from No. 905 Kohl Building, San Francisco, California, to No. 2005, One Eleven Sutter Street, San Francisco, California; and

Further Resolved, that said last mentioned address be and it is hereby adopted as the principal office of this corporation at which meetings of stockholders and directors shall henceforth be held, except as otherwise permitted by law and the by-laws of this corporation.

There being no further business, on motion duly made, seconded and carried, the meeting was adjourned.

[Signed] P. A. WOOD,
Secretary of the Meeting.

We hereby certify that the foregoing minutes are correct.

[Signed] TIMOTHY HOPKINS

[Signed] ANDREW THORNE

[Signed] P. A. WOOD [40]

Exhibit B-2 (Continued)

Minutes of Special Meeting
of the Board of Directors of

WESTERN SHORE LUMBER COMPANY

San Francisco, California,
August 8, 1933.

Pursuant to call by the President and written notice as hereinafter set forth, a special meeting of the Board of Directors of Western Shore Lumber Company, a corporation, was held at the office of the corporation at Room 2005, 111 Sutter Street, San Francisco, California, on Tuesday, the 8th day of August 1933, at the hour of 11 o'clock A. M. The following directors were present, constituting a quorum:

Timothy Hopkins
A. Crawford Greene
Percy A. Wood
Andrew Thorne

President Hopkins presided, and Secretary Lane acted as secretary of the meeting.

The President's call was presented and, on motion duly made and seconded, was made a part of the records of the meeting. Said call is as follows:

Call for Special Meeting of
The Board of Directors of

WESTERN SHORE LUMBER COMPANY

A special meeting of the Board of Directors of Western Shore Lumber Company is hereby called

Exhibit B-2 (Continued)

to be held at the office of the corporation, Room 2005, 111 Sutter Street, San Francisco, California, on Tuesday, the 8th day of August, 1933, at 11:00 o'clock A. M., for the purpose of considering and acting upon the election of a director to succeed Mr. Walter L. Dean, deceased, and for the purpose of considering and acting upon any and all other business which may come before the meeting.

The Secretary of the corporation is hereby directed to give notice of said meeting in accordance with the by-laws of the corporation.

[Signed] TIMOTHY HOPKINS,
President.

Dated: San Francisco, California, August 2, 1933.

The secretary reported that in accordance with the foregoing call, and in accordance with the by-laws of the corporation, she had deposited with postage thereon prepaid, in the United States mail at San Francisco, California, a notice of the meeting, addressed to each director at his place of business or residence as known to the Secretary, at least thirty-six hours before the time fixed for the holding of the meeting, namely, on the 2nd day of August, 1933. The Secretary presented to the meeting a copy of the notice so mailed by *him* to each of the directors, and on motion duly made and seconded said copy was made a part of the records of the meeting. Said copy is as follows: [41]

Exhibit B-2 (Continued)

Notice of Special Meeting of
Board of Directors of

WESTERN SHORE LUMBER COMPANY

Notice is hereby given that a special meeting of the Board of Directors of Western Shore Lumber Company has been called by the President to be held, and will be held at the office of the corporation, Room 2005, 111 Sutter Street, San Francisco, California, on Tuesday, the 8th day of August, 1933, at 11 o'clock A. M., for the purpose of considering and acting upon the election of a director to succeed Mr. Walter L. Dean, deceased and for the purpose of considering and acting upon any and all other business which may come before the meeting.

[Signed] MYRA LANE,

Secretary of Western Shore
Lumber Company.

Dated at San Francisco, California, August 2, 1933.

The President announced that there was a vacancy in the Board and called for nominations. Mr. Greene moved, seconded by Mr. Wood, that Mr. Walter Edwin Dean be elected a Director of this corporation, and upon the motion being put, Mr. Dean was unanimously elected and being present, took his seat.

The Secretary read the minutes of the previous meeting held on the 5th day of July, 1933. On motion of Director Greene, duly seconded, the said

Exhibit B-2 (Continued)

minutes were unanimously ratified and approved as read, with the following modifications:

On Page 69, the lines "Mr. Andrew Thorne stated and disclosed that he was interested in the said resolutions as one of the heirs of W. S. Thorne, deceased," should read—"Mr. Andrew Thorne stated and disclosed that he was interested in the said resolutions as executor of the estate of W. S. Thorne, deceased."

On Page 65, the resolutions providing for banking arrangements with the Wells Fargo Bank & Union Trust Company in relation to withdrawal of money and access to safe deposit vault, the lines—"A. Crawford Greene, Vice President, alone," should read—"— "A. Crawford Greene, Vice President, and Myra Lane, Secretary, together."

After a discussion of the financial condition of the corporation, upon motion the President and Secretary were instructed to pay the interest semi-annually beginning August 15, 1933, upon loans made to this corporation by its stockholders.

The Directors also decided that it would be to the best interests of *the best interests of* the Company to maintain a reserve to provide against future expenses, and the President reported that at present there was \$33,592.86 in the savings bank for this purpose.

There being no further business, on motion duly made, seconded and carried, the meeting adjourned.

[Signed] MYRA LANE,

Secretary of the Meeting. [42]

Exhibit B-2 (Continued)

WESTERN SHORE LUMBER COMPANY

San Francisco, California

BALANCE SHEETS

Assets		
	Jan. 1-33	Dec. 31-33
Cash	\$ 36,458.26	44,390.09
Timber	1,491,412.71	1,474,970.01
Real Estate	66,195.55	66,195.55
Buildings	1,250.98	1,250.98
Total	<u>1,595,317.50</u>	<u>1,586,806.63</u>

Liabilities		
Deposit on Stumpage.....	40,000.00	40,000.00
Stockholders' Loans	66,850.75	60,165.68
Common Capital Stock.....	1,000,000.00	1,000,000.00
Surplus & Appreciation Reserves	488,466.75	486,640.95
Total	<u>1,595,317.50</u>	<u>1,586,806.63</u>

[43]

[On the original there is here inserted a copy of Agreement. Copy of this Agreement appears in the Claim for Refund for the year 1933.]

[44]

EXHIBIT No. B-3

Form 843

Treasury Department

Internal Revenue Service

Revised June 1930

To Be Filed in Duplicate

CLAIM

To Be Filed With the Collector Where Assessment
Was Made or Tax Paid

The Collector will indicate in the block below the

kind of claim filed, and fill in the certificate on the reverse side.

- ☐ Refund of Tax Illegally Collected.
- ☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- ☐ Abatement of Tax Assessed (not applicable to estate or income taxes).

Collector's Stamp (Date received)

State of California

City and County of San Francisco—ss.

Type or Print.

Name of taxpayer or purchaser of stamps—Western Shore Lumber Company.

Business address—403 Merchants Exchange Building, San Francisco, California.

Residence—

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed—First District, California.

2. Period (if for income tax, make separate form for each taxable year)—Year ending June 30, 1935.

3. Character of assessment or tax—Capital stock tax.

4. Amount of assessment, \$24.00; dates of payment—July 31, 1935.

5. Date stamps were purchased from the Government—

6. Amount to be refunded—\$24 with interest thereon at the rate of 6%.

7. Amount to be abated (not applicable to income or estate taxes)—

8. The time within which this claim may be legally filed does not expire prior to July 31, 1939 (See Revised Stats. Sec. 3228, as amended.)

The deponent verily believes that this claim should be allowed for the following reasons:

(For statement of grounds for refund, see pages attached hereto and hereby made a part hereof.)

(Attach letter-size sheets if space is not sufficient)

WESTERN SHORE LUMBER
COMPANY

[Signed] By FRANK C. NELSON

Secretary

Sworn to and subscribed before me this 27th day of August 1937.

[Notarial Seal] FRANK L. OWEN

Notary Public in & for the city & county of San Francisco, State of California.

(See Instructions on Reverse Side)

(See Instructions on Reverse Side) [45]

CERTIFICATE

I certify that an examination of the records of this office shows the following facts as to the assessment and payment of the tax: Character of assessment and period covered, List, Year, Month, Account No. or Page, Line, Amount assessed, \$----- Total, \$-----.

Paid, Abated, or Credited, Date, Amount, \$-----.
 Total, \$-----.

Claim No.-----.

I certify that the records of this office show the following facts as to the purchase of stamps: To Whom Sold or Issued, Kind, Number, Denomination, Date of sale or issue, Amount, \$-----.

If special tax stamp, state: Serial number, Period commencing—.

-----, -----
 Collector of Internal Revenue. (District)

Committee on Claims

Claim examined by—-----.

Claim approved by—----- Chief of Division.

Amount claimed-- \$-----.

Amount allowed-- \$-----.

Amount rejected-- \$-----.

INSTRUCTIONS

1. The claim must be set forth in detail and under oath each ground upon which it is made, and facts sufficient to apprise the Commissioner of the exact basis thereof.

2. The claim should be sworn to by the taxpayer, if possible. Whenever it is necessary to have the claim executed by an attorney or agent, on behalf of

the taxpayer, an authenticated copy of the document specifically authorizing such agent or attorney to sign the claim on behalf of the taxpayer shall accompany the claim. The oath will be administered without charge by any collector, deputy collector, or internal revenue agent.

3. If a return is filed by an individual and a refund claim is thereafter filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made on the claim showing that the return was filed by the fiduciary and that the latter is still acting.

4. Where the taxpayer is a corporation, the claim shall be signed with the corporate name, followed by the signature and title of the officer having authority to sign for the corporation.

[On the original there is here inserted a copy of Statement of Facts. Copy of this Statement of Facts appears in the Claim for Refund for the year 1933.] [46]

WESTERN SHORE LUMBER COMPANY
CASH RECEIPTS AND DISBURSEMENTS

July 1, 1934 to June 30, 1935

Receipts

Receipts under Stumpage Contract with Santa Cruz Lumber Co.....	\$ 4,625.93
Interest—Special Savings Account with Wells Fargo Bank & Union Trust Co.....	562.05
Sale of Equipment.....	50.00
	<hr/> 5,237.98 <hr/>

Disbursements

Interest on Loans.....	4,243.94
Taxes	4,310.22
Timber Lands	4,259.56
San Mateo County.....	3,957.17
Santa Cruz County.....	302.39
	<hr/>
Federal Capital Stock.....	25.00
State Franchise	25.00
Federal Check .....	.66
	<hr/>
Trail Maintenance	1,800.00
Secretarial Expense	300.00
General Expenses	274.00
Office Rent	240.00
Compensation Insurance	32.00
Miscellaneous	2.00
	<hr/>
	10,928.16 <hr/>
Excess Disbursements Over Receipts.....	5,690.18
Balance Cash July 1, 1934.....	41,402.66
Wells Fargo Bank & Union Trust Co.—	
Savings Account	34,434.42
Wells Fargo Bank & Union Trust Co.—	
Commercial Account	6,968.24
	<hr/>
Balance Cash June 30, 1935.....	35,712.48
Wells Fargo Bank & Union Trust Co.—	
Savings Account	34,996.47

Wells Fargo Bank & Union Trust Co.—

Commercial Account 716.01

[47]

No Minutes of Meetings of Board of Directors
for Year

July 1, 1934 to June 30, 1935 [48]

WESTERN SHORE LUMBER COMPANY

San Francisco, California

BALANCE SHEETS

Assets

	Jan. 1-34	Dec. 31-34
Cash	\$ 44,390.09	41,311.10
Timber	1,474,970.01	1,457,497.98
Real Estate	66,195.55	66,195.55
Buildings	1,250.98	1,250.98
Total	1,586,806.63	1,566,255.61

Liabilities

Deposit on Timber Purchase.....	40,000.00	27,479.08
Accounts Payable		1,157.44
Stockholders' Loans	60,165.68	51,441.70
Common Capital Stock.....	1,000,000.00	1,000,000.00
Surplus & Appreciation Reserves..	486,640.95	486,177.39
Total	1,586,806.63	1,566,255.61

[49]

[On the original there is here inserted a copy of Agreement. Copy of this Agreement appears in the Claim for Refund for the year 1933.] [50]

EXHIBIT No. B-4

Form 843

Treasury Department

Internal Revenue Service

Revised June 1930

To Be Filed in Duplicate

CLAIM

To Be Filed With the Collector Where Assessment
Was Made or Tax Paid

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

☐ Refund of Tax Illegally Collected.☐ Refund of Amount Paid for Stamps Unused,
or Used in Error or Excess.☐ Abatement of Tax Assessed (not applicable to estate or income taxes).

Collector's Stamp (Date received)

State of California

City and County of San Francisco—ss.

Type or Print.

Name of taxpayer or purchaser of stamps—West-
ern Shore Lumber Company.

Business address—403 Merchants Exchange
Building, San Francisco, California.

Residence—

The deponent, being duly sworn according to law,
deposes and says that this statement is made on
behalf of the taxpayer named, and that the facts
given below are true and complete:

1. District in which return (if any) was filed—
First District, California.

2. Period (if for income tax, make separate form
for each taxable year)—Year ending June 30, 1936.

3. Character of assessment or tax—Capital stock
tax.

4. Amount of assessment, \$1,000; dates of pay-
ment—September 18, 1936.

5. Date stamps were purchased from the Gov-
ernment—

6. Amount to be refunded—\$1,000 with interest
thereon at the rate of 6%.

7. Amount to be abated (not applicable to income
or estate taxes)—

8. The time within which this claim may be
legally filed does not expire prior to Sept. 18, 1940
(See Revised Stats. Sec. 3228, as amended.)

The deponent verily believes that this claim should
be allowed for the following reasons:

(For statement of grounds for refund, see
pages attached hereto and hereby made a part
hereof.)

(Attach letter-size sheets if space is not sufficient)

WESTERN SHORE LUMBER
COMPANY

[Signed] By FRANK C. NELSON

Secretary

Sworn to and subscribed to before me this 27th
day of August 1937.

[Notarial Seal] FRANK L. OWEN

Notary Public in & for the city & county of San
Francisco, State of California.

(See Instructions on Reverse Side) [51]

CERTIFICATE

I certify that an examination of the records of this office shows the following facts as to the assessment and payment of the tax: Character of assessment and period covered, List, Year, Month, Account No. or Page, Line, Amount Assessed, \$.....

Total, \$-----.

Paid, Abated, or Credited Date, Amount \$-----.

Total, \$-----.

Claim No. -----.

I certify that the records of this office show the following facts as to the purchase of stamps: To Whom Sold or Issued, Kind, Number, Denomination, Date of sale or issue, Amount \$-----.

If special tax stamp, state: Serial number Period commencing—.

-----, -----
Collector of Internal Revenue. (District)

Committee on Claims

Claim examined by-----.

Claim approved by-----Chief of Division.

Amount claimed-- \$-----.

Amount allowed--- \$-----.

Amount rejected-- \$-----.

INSTRUCTIONS

1. The claim must set forth in detail and under oath each ground upon which it is made, and facts sufficient to apprise the Commissioner of the exact basis thereof.

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3. If a return is filed by an individual and a refund claim is thereafter filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made on the claim showing that the return was filed by the fiduciary and that the latter is still acting.

4. Where the taxpayer is a corporation, the claim shall be signed with the corporate name, followed by

the signature and title of the officer having authority to sign for the corporation.

[On the original there is here inserted a copy of Statement of Facts. Copy of this Statement of Facts appears in the Claim for Refund for the year 1933.] [52]

WESTERN SHORE LUMBER COMPANY
CASH RECEIPTS AND DISBURSEMENTS
July 1, 1935 to June 30, 1936

Receipts

Receipts under Stumpage Contract with Santa Cruz Lumber Co.....	\$ 9,404.54
Interest—Special Time Deposit with Wells Fargo Bank & Union Trust Co.....	165.58
Sale of Junk.....	158.38
Total Receipts	<hr/> 9,728.50 <hr/>

Disbursements

Taxes	4,909.05
Timber Lands	4,719.32
San Mateo County.....	4,449.70
Santa Cruz County.....	269.62
Federal Income Tax (1½ Year)....	104.14
State Franchise Tax.....	61.59
Federal Capital Stock.....	24.00
Interest on Loans.....	3,086.50
Trail Maintenance	1,800.00
Secretarial Expense	300.00
General Expenses	322.00
Office Rent	240.00
Repairs	48.00
Compensation Insurance	32.00
Miscellaneous	2.00
Total Disbursements	<hr/> 10,417.55 <hr/>

Disbursements—(Continued)

Excess Disbursements Over Receipts.....	689.05	
Balance Cash July 1, 1935.....	35,712.48	
Wells Fargo Bank & Union Trust Co.—		
Savings Account	34,996.47	
Wells Fargo Bank & Union Trust Co.—		
Commercial Account	716.01	
Balance Cash June 30, 1936.....	35,023.43	
Wells Fargo Bank & Union Trust Co.—		
Savings Account	32,162.05	
Wells Fargo Bank & Union Trust Co.—		
Commercial Account	2,861.38	

[53]

WESTERN SHORE LUMBER COMPANY

Copies of Minutes of Meetings of Board of Directors

July 1, 1935 to June 30, 1936

Minutes of Special Meeting of the
Board of Directors of
Western Shore Lumber Company

San Francisco, California,
February 18, 1936.

Pursuant to call by Directors A. Crawford Greene and Percy A. Wood and written notice as herein-after set forth, a special meeting of the Board of Directors of Western Shore Lumber Company, a corporation, was held at the office of the corporation at room 2005, 111 Sutter Street, San Francisco, California, on Tuesday, the 18th day of February, 1936, at the hour of 3:00 o'clock P.M. The following directors were present, constituting a quorum:

Messrs. A. CRAWFORD GREENE
PERCY A. WOOD
ANDREW THORNE

Absent: Mr. Walter Edwin Dean II.

Vice-President Greene presided and Secretary Lane acted as secretary of the meeting.

The Directors' call was presented and, on motion duly made and seconded, was made a part of the records of the meeting. Said call is as follows:

Call for Special Meeting of Board of Directors
of

Western Shore Lumber Company

The undersigned, A. Crawford Greene and Percy A. Wood, constituting two of the directors of Western Shore Lumber Company, hereby call a special meeting of the Board of Directors of said corporation in accordance with the by-laws, to be held at its office, Room 2005, 111 Sutter Street, San Francisco, California, on Tuesday, the 18th day of February, 1936, at 3:00 o'clock P.M., for the purpose of considering and acting upon any and all business which may come before said meeting.

The Secretary of the corporation is hereby directed to give notice of said meeting in accordance with the by-laws.

[Signed] PERCY A. WOOD

“ A. CRAWFORD GREENE

Directors of

WESTERN SHORE LUMBER
COMPANY

Dated: February 14, 1936. [54]

The Secretary reported that in accordance with the foregoing call, and in accordance with the by-laws of the corporation, she had deposited with postage thereon prepaid, in the United States mail at San Francisco, California, a notice of the meeting, addressed to each director at his place of business or residence as known to the Secretary, at least thirty-six hours before the time fixed for the holding of the meeting, namely on the 18th day of February, 1936. The Secretary presented to the meeting a copy of the notice so mailed by her to each of the directors, and on motion duly made and seconded said copy was made a part of the records of the meeting. Said copy is as follows:

Notice is hereby given that a special meeting of the Board of Directors of Western Shore Lumber Company has been called by two of the directors, pursuant to the by-laws, to be held, and that said meeting will be held, at the office of the company, Room 2005, 111 Sutter Street, San Francisco, California, on Tuesday, the 18th day of February, 1936, at 3:00 o'clock P.M., for the purpose of considering and acting upon any and all business which may come before the meeting.

[Signed] MYRA LANE

Secretary of
WESTERN SHORE LUMBER
COMPANY

Dated: February 14, 1936.

The Vice President called for the reading of the minutes of the previous meeting held on the 8th day of August, 1933. On motion duly made, seconded and

carried the said minutes were approved as read.

Vice President Greene announced that there was a vacancy in the Board and called for nominations. Mr. Wood nominated Mr. J. A. Ducournau, and there being no further nominations, on motion of Mr. Wood, seconded by Mr. Thorne, Mr. Ducournau was duly elected and, being present, took his seat with the other directors present.

Mr. Greene further announced that nominations were in order for the office of President of the corporation. Mr. Thorne nominated Mr. Percy A. Wood, and there being no further nominations, upon motion of Mr. Thorne, seconded by Mr. Ducournau, Mr. Wood was unanimously elected the President of this corporation.

Vice President Greene reported that he had recently signed, with the approval of Mr. Wood, a supplemental agreement between this corporation and the Santa Cruz Lumber Company. The Secretary presented said agreement, dated January 17, 1936, being supplemental to the agreement of March 10, 1930, with the said Santa Cruz Lumber Company, and allowing them to cut, fell and remove certain timber on lands of this corporation in

East $\frac{1}{2}$ and the East $\frac{1}{2}$ of the West $\frac{1}{2}$ of Section 22, Township 8 South, Range 3 West

at the price of Two Dollars (\$2.00) per thousand feet board measure. On motion, duly made and seconded, it was unanimously voted that the action of the Vice President and Secretary in executing the above said supplemental agreement be ratified, confirmed and approved. [55]

The Secretary reported Cash in Bank as of this date in the amount of \$38,215.71. A financial statement for the year ending December 31, 1935, was also presented by the Secretary, a copy of which follows.

WESTERN SHORE LUMBER COMPANY

STATEMENT

December 31, 1935

Assets			
Cash in Bank.....			\$33,546.38
Land—13,239 Acres at \$5.....			66,195.55
Redwood Timber	1,380,877.26		
Reserve for Depletion.....	90,255.06	1,290,622.20	
<hr/>			
Pine Timber	84,622.50		
Reserve for Depletion.....	10,658.46	73,964.04	
<hr/>			
Tan Bark	75,230.40		
Reserve for Depletion.....	1,480.73	73,749.67	
<hr/>			
Road Building		1,250.98	
Mill Construction	4,823.78		
Water Works	1,664.58		
Logging Equip. & Machinery	5,731.62	12,219.98	
<hr/>			
Less Reserve for Depreciation.....	12,219.98		
			<hr/>
			1,539,328.82
Liabilities			
Assessments—Stockholders	37,500.00		
Loans Payable—Stockholders	51,441.70		
Accounts Payable	195.00		
Capital Surplus from Appreciation	608,303.51		
Less Balance Acct.....	158,111.39	450,192.12	
<hr/>			
Capital Stock	1,000,000.00	1,539,328.82	
			<hr/>

WESTERN SHORE LUMBER COMPANY

INCOME AND EXPENSES

1935

Income			
Sales of Timber.....	30,649.14		
Sales of Old Machinery.....	50.00		
Interest on Special Savings Acct.....	300.70		30,999.84
<hr/>			
Expenditures			
Interest on Loans.....	3,086.50		
Salary—Caretaker	1,500.00		
Horse Feed—Bennett	300.00		
Tallyman Expense	300.00		
Office Rent	240.00		
Salary—Secretary	300.00		
Expenses—Bennett	24.00		
Compensation Insurance Premiums..	32.00		
Notary Fees	2.00		
Taxes Paid:			
Real Estate	4,489.44		
State Franchise	25.00		
Federal Capital Stock..	24.00		
Federal Excise .....	.10	4,538.54	10,323.04
<hr/>			20,676.80
Timber Depletion			11,725.75
<hr/>			8,951.05
Balance			<hr/> <hr/>

[56]

On motion duly made and seconded the following resolution was adopted by the vote of all Directors present:

Resolved: That the President, Percy A. Wood, and Secretary, Myra Lane, of this corporation, or the Vice President, A. Crawford Greene and the Secretary, Myra Lane, are jointly authorized to sign the name of this Corporation to Checks, Drafts, Bills of Exchange, Receipts, Acceptances and Acquit-

tances and to endorse its name on Checks, Drafts, Bills of Exchange, Notes and other evidences of indebtedness, and the President shall have the power to confer the authority hereby given him on other Officers and Agents of the Corporation as may, in his judgment, be necessary to facilitate its business.

Motion was duly made, seconded and carried that the office of this Corporation be and it is hereby changed from Room 2005 to Room 1812, Number 111 Sutter Street, San Francisco, California.

There being no further business, on motion duly made, seconded and carried, the meeting adjourned.

[Signed] MYRA LANE

Secretary. [57]

WESTERN SHORE LUMBER COMPANY

San Francisco, California

BALANCE SHEETS

	Assets	
	Jan. 1-35	Dec. 31-35
Cash	\$ 41,311.10	33,546.38
Timber	1,457,497.98	1,438,335.91
Real Estate	66,195.55	66,195.55
Buildings	1,250.98	1,250.98
Total	<u>1,566,255.61</u>	<u>1,539,328.82</u>

	Liabilities	
Deposit on Timber Purchase.....	27,479.08	
Accounts Payable	1,157.44	195.00
Stockholders' Loans	51,441.70	51,441.70
Common Capital Stock.....	1,000,000.00	1,000,000.00
Surplus & Appreciation Reserves..	486,177.39	487,692.12
Total	<u>1,566,255.61</u>	<u>1,539,328.82</u>

[58]

[On the original there is here inserted a copy of Agreement. Copy of this Agreement appears in the Claim for Refund for the year 1933.]

[59]

EXHIBIT C

TREASURY DEPARTMENT

Washington

Office of

Commissioner of Internal Revenue

Jan. 26, 1938

Address Reply to

Commissioner of Internal Revenue

And Refer to

MT: CST: CFP 161541

Cls: CST-53148, 53149, 63859, 82564

Western Shore Lumber Company,

4 Montgomery Street

San Francisco, California.

Gentlemen:

Consideration has been given to your claims filed for the refund of \$1,250.00, \$25.00, \$24.00, and \$1,000.00 representing the capital stock tax liability paid for the taxable years ended June 30, 1933, June 30, 1934, June 30, 1935, and June 30, 1936, respectively.

The claims are based on the contention that the corporation is a holding company and that it has not engaged in business activities for the years

involved within the meaning of the law and regulations, and therefore it is not subject to capital stock tax.

The evidence of record discloses that an agreement was made by your corporation on April 23, 1929, with the Santa Cruz Lumber Company, whereby the second party acquired the right to cut, fell and remove the redwood and pine timber and the tanbark from the timber lands of the first party according to certain provisions. The evidence also discloses that your corporation retained the right to employ a tallyman mutually agreed upon by both parties, or appointed by your corporation and the expenses of the employment of the tallyman be divided between the parties concerned. The determination of the amount of tanbark cut by the second party was also determined by a person either elected by your corporation or agreed upon by both parties and the expense of the employment of such person was borne equally by both parties. Your corporation also retained the right at any time to inspect the operations of the second party on the said timber lands and the method of tallying provided for and also to examine the books of account of the second party and all other records covering the operations on the timber lands involved in the agreement. The evidence also reveals that the agreement was only for a term of two years which indicates that any timber removed after 1931 was done under an oral agreement. [60]

Under the law and regulations a holding company

is defined as one whose corporate powers are limited to the mere holding of property and distribution of its avails, or one which, although incorporated for the purpose of doing business, has retired from the business for which it was organized and has reduced its activities to the mere ownership and holding of the property, distributing its avails and doing only such acts as are necessary for the maintenance of its corporate existence and to the private management of its purely internal affairs. If a corporation should go beyond the limitations stated above and engage in any business activities at any time, the tax will attach.

In view of the foregoing provisions of the law and regulations and inasmuch as the evidence clearly shows that the property was not entirely out of control of your corporation but under the agreement was subject to its supervision, it is held that your corporation during the years involved, engaged in activities in excess of those of a dormant holding company and therefore is not exempt from capital stock tax.

Your claims for refund are therefore rejected in full.

Respectfully,

GUY T. HELVERING,

Commissioner

By D. S. BLISS,

Deputy Commissioner [61]

No. 3688

C. F. Curry, Secretary of State J. Hoesch, Deputy

STATE OF CALIFORNIA

DEPARTMENT OF STATE—ss.

I. C. F. Curry, Secretary of State of the State of California, do hereby certify that I have carefully compared the annexed copy of Articles of Incorporation of Western Shore Lumber Company with the certified copy of the original now on file in my office, and that the same is a correct transcript therefrom, and of the whole thereof. Also that this authentication is in due form and by the proper officer.

Witness my hand and the Great Seal of State, at office in Sacramento, California, the 2nd day of July, A. D. 1906.

[SEAL]

C. F. CURRY

Secretary of State.

By J. HOESCH

Deputy. [62]

EXHIBIT D

ARTICLES OF INCORPORATION

of the

WESTERN SHORE LUMBER COMPANY

Know All Men By These Presents:

That we, the undersigned, a majority of whom are citizens and residents of the State of California, have this day voluntarily associated ourselves to-

gether for the purpose of forming a corporation under the laws of the State of California, and we hereby certify:

First: That the name of the Corporation shall be: Western Shore Lumber Company.

Second: That the purposes for which said corporation is formed are:

(a) To engage in and carry on in all their branches a general lumber, mercantile, commercial, commission, manufacturing, trading, transportation, water, lighting, power, storage and investment business; to acquire in any manner, or to any extent, in any part of the world, or by construction, purchase, condemnation, exchange, location, appropriation, or otherwise, or in any manner whatsoever to receive, own, hold, use, operate, lease, supply, mortgage, sell, or otherwise acquire, hold or dispose of, lands, timber, lumber, wood, bark, water, water rights, power, electric and otherwise, railroads, wagon roads, skid roads, plank roads, turnpike roads, or any other kind of roads, power transmission plants, sawmills, bridges, aqueducts, ferries wharves, chutes, piers, canals, flumes, ditches, steamboats, or any other kind of boats, stores, boarding houses, mills, factories, pipe lines, reservoirs and reservoir sites, dams, dam sites, pole lines, telegraph and telephone plants, patents, patent rights, franchises, securities, investments, or any other kind of property, real, personal or mixed; to

apply for, obtain register, lease, or otherwise acquire, and to hold, use, operate, sell, assign, or otherwise dispose of any trade mark, trade names, patents, inventions, improvements and processes, used in connection with or secured under letters of the United States or of any other country or countries, or otherwise; and to use, exercise, develop, grant, license or otherwise turn to account any such trade marks, trade names, patents, inventions, improvements and processes and the like, or any property rights or inventions so acquired, and with a view to the working and development of the same to carry on any business which the Board of Directors then in office may from time to time deem calculative directly or indirectly to effectuate these objects or any of them. To acquire the good will and property of all kinds and to pay for the same in cash, stocks or bonds of this corporation. To purchase, lease, hire exchange or otherwise acquire any and all rights, privileges, permits or franchises suitable or convenient for any of the purposes of the business of this corporation, and to carry on a general business and act as fully in all matters of business as a natural person might or could do, and in any part of the world act as principal agent or otherwise; and pledge any property which may be acquired by it.

(b) To contribute in any manner to the expense of promoting, constructing, acquiring,

improving or maintaining, any work, of any kind, howsoever owned; to buy, acquire, hold, guaranty, pledge or contract with reference to, or otherwise dispose of, in any manner whatsoever, shares, bonds, obligations, or other securities of this or of [63] any other corporations, or of firms or of individuals; to borrow, receive on deposit, or otherwise, or lend moneys; and issue bonds and other obligations in payment for property purchased or acquired by it, for moneys borrowed or for any other lawful object in and about its business.

(c) To promote, do, acquire, hold or dispose of all or anything incident to or necessary, suitable, convenient or proper to carry out any of the matters, things or purposes aforesaid, or incidental thereto, or the attainment of any one or more of the objects herein enumerated, or which in the judgment of the Board of Directors then in office may be deemed or declared by it, by By-laws, resolution or otherwise, to be necessary, useful, incidental or auxiliary to any of the purposes of the corporation, or to tend to advance the interests of the Company directly or indirectly, or for the protection, advantage, benefit and use of the corporation.

Third: That the place where the principal business of said corporation is to be transacted in the City and County of San Francisco, State of California.

Fourth: That the term for which said corporation is to exist is Fifty (50) years from the date of its incorporation.

Fifth: That the number of Directors of said corporation shall be five (5), and that the names and residences of its directors who are to serve until the election and qualification of their successors are as follows; to wit:

Names	Whose Residence Is at
Timothy Hopkins,	Menlo Park, California.
H. L. Middleton,	Boulder Creek, California.
J. S. Severence,	San Francisco, California.
William B. McKinnon,	San Mateo, California.
William H. Middleton,	San Francisco, California.

Sixth: That the amount of the Capital Stock of the said corporation is one million (1,000,000) dollars, and the number of shares into which it is divided is ten thousand (10,000) shares of the par value of one hundred (100) dollars each.

Seventh: That the amount of said Capital Stock which has been actually subscribed is five hundred (500) dollars, and that the following are the names of the persons by whom the same has been subscribed.

Names	Number of Shares	Amount
Timothy Hopkins	one	\$100.
H. L. Middleton.....	one	\$100.
J. S. Severence.....	one	\$100.
William B. McKinnon.....	one	\$100.
William H. Middleton.....	one	\$100.

In Witness Whereof, we have hereunto set our hands this 18th day of November, 1905.

TIMOTHY HOPKINS

H. L. MIDDLETON

J. S. SEVERENCE

WM. B. McKINNON

WILLIAM H. MIDDLETON

[64]

State of California,

City and County of San Francisco—ss.

On this 18th day of November, A.D. one thousand nine hundred and five, before me, Mark Lane, a Notary Public in and for the City and County of San Francisco, personally appeared Timothy Hopkins, H. L. Middleton, J. S. Severence, William B. McKinnon, and William H. Middleton, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year in the certificate first above written.

[Notarial Seal] MARK LANE,

Notary Public in and for the City and County of San Francisco, State of California.

State of California,

City and County of San Francisco—ss.

I, John J. Greif, County Clerk of the City and County of San Francisco, State of California, hereby certify the foregoing to be a full, true and correct copy of the original Articles of Incorporation

of Western Shore Lumber Company filed in my office on the 20th day of November, A.D. 1905.

Attest my hand and my official seal this 20th day of November, A.D. 1905.

[Seal]

JOHN J. GREIF

County Clerk.

By CHAS. C. MORRIS,

Deputy County Clerk.

[Endorsed]: Filed in the office of the County Clerk of the City and County of San Francisco, State of California, this 20th day of Nov. A.D. 1905.

JOHN J. GREIF

County Clerk.

By CHAS. C. MORRIS

Deputy Clerk.

[Endorsed]: Filed in the office of the Secretary of State, the 21st day of Nov. A.D. 1905.

C. F. CURRY

Secretary of State.

By J. HOESCH

Deputy.

Recorded Book 180, Page 223.

[Endorsed]: Filed Nov. 30, 1939. [65]

[Title of District Court and Cause.]

ANSWER

Now comes the defendant, appearing by its Attorney, Frank J. Hennessy, United States Attorney

for the Northern District of California, and answers the complaint on file herein as follows:

I.

Defendant admits the allegations of Paragraph I of the complaint.

II.

Answering the allegations of Paragraph II of the complaint defendant denies that the assessment and collection [66] of the taxes referred to in said Paragraph were erroneous or illegal.

III.

Defendant admits the allegations of Paragraph III of the complaint.

IV.

Defendant denies each and every allegation of Paragraph IV of the complaint.

V.

Defendant denies each and every allegation of Paragraph V of the complaint.

VI.

Answering the allegations of Paragraph VI of the complaint, defendant admits that no part of the taxes referred to in said Paragraph have been refunded to the plaintiff. Denies the remaining allegations of Paragraph VI.

Wherefore defendant prays that the complaint be dismissed, for its costs, and for such other relief as may be just.

(Receipt of Service)

FRANK J. HENNESSY

United States Attorney,

ESTHER B. PHILLIPS

Assistant United States

Attorney.

[Endorsed]: Filed Mar. 29, 1940. [67]

[Title of District Court and Cause.]

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DIRECTION FOR ENTRY
OF JUDGMENT

The above entitled action came on regularly for trial before the above entitled Court, the Honorable Harold Louderback presiding, without a jury, on February 6, 1941, and the above named plaintiff and the above named defendant appeared by their respective counsel. Oral and documentary evidence on behalf of the respective parties was introduced and the cause was duly submitted to the Court for its decision and judgment, upon written briefs filed by the parties. The Court having fully considered the facts and the law applicable thereto and being fully advised in the [68] premises now makes its Findings of Fact and Conclusions of Law and directs entry of judgment, as follows:

Findings of Fact

1. Western Shore Lumber Company, the plaintiff herein, was organized under the laws of the

State of California in 1905 to acquire approximately 13,000 acres of timber land in San Mateo County and approximately 550 acres of timber land in Santa Cruz County, State of California. The Company was organized by Timothy Hopkins, then treasurer of the Southern Pacific Railroad Company, Senator Felton and certain associates who believed that the railroad was going to build a branch line through this area from San Francisco to Santa Cruz. However, the line was never constructed, and the Company has never engaged in active lumber operations.

2. During the early years of its existence, the Company permitted some timber and tanbark to be cut from its land in order to obtain funds for the payment of taxes and current expenses and in this way received a total of \$36,449.56 during the period from its organization to and including the calendar year 1910. The Company likewise received from a similar source \$25,094.63 during the period from 1911 to 1922 and in 1920 sold a portion of its acreage to the State of California for park purposes for a total purchase price of \$38,400.00. The Company operated a small shingle mill for a brief period in 1918 and 1919 but the mill was shut down and was never operated after 1921. With this exception the Company has never engaged in any active operations of any kind.

3. Since the closing down of the shingle mill, the Company's activities have been confined to maintaining and holding its properties until such

time as the same could be satisfactorily liquidated. The Company paid Federal capital stock taxes in 1923, [69] 1924, 1925 and 1926 but subsequently filed claims for refund which were allowed in 1929, on the ground that the Company was not engaged in business during such years.

4. The yearly taxes upon the Company's properties have been quite substantial. For a time these taxes were paid out of funds on hand and loans made by stockholders. During the period from 1925 to 1929, the moneys necessary to pay taxes were raised by levying assessments upon the stockholders of the Company, but in 1929 in order to provide funds for this purpose and for current expenses, a stumpage contract was entered into with Santa Cruz Lumber Company by which that corporation was permitted to cut timber from an isolated portion of the Company's properties and was required to pay for the timber cut. Receipts from this source have been sufficient to pay the taxes and to reduce the indebtedness previously incurred to stockholders. The amount of such indebtedness on July 1, 1932 was \$66,850.75.

5. The period in issue in this action is the period from July 1, 1932 to June 30, 1936. At the commencement of this period the assets of the Company consisted, as for many years previously, solely of approximately 12,500 acres of timber lands in San Mateo County and approximately 550 acres of timber lands in Santa Cruz County, State of California, and certain cash in bank accounts. During

the period from July 1, 1932 to June 30, 1936, the Company carried on no activities other than the holding and safeguarding of these timber properties and occasional negotiations looking toward their disposition as a whole. Very little supervision was necessary. The manner in which the Company conducted such activities as it engaged in was the same as in the period from 1922 to 1926. During this entire period there were no meetings of stockholders or of the Company and only three meetings of the board of directors, two of [70] which were in 1933 and one in 1936. The actions taken at the two meetings in 1933 were solely on routine corporate matters, such as the filling of vacant offices, authorizing the employment of auditors, et cetera, while the only non-routine business transacted at the meeting in 1936 was the ratification of a supplemental agreement with the Santa Cruz Lumber Company by which that corporation was permitted to cut timber under its existing contract on certain additional land of the Company.

6. With the exception of a supplemental agreement ratified at the meeting of the board of directors in 1936, the Company executed no contracts whatsoever during the period between July 1, 1932 and June 30, 1936. The Company purchased no property during this period, other than miscellaneous office supplies. It made no investments of any kind. It sold no property and carried on no business activities for profit. The only receipts of the Company during this period were interest on

its bank accounts and receipts under its stumpage contract with the Santa Cruz Lumber Company. The Company had no employes, except a secretary who was paid \$25 per month and a caretaker employed to maintain the trails through the timber properties and keep a lookout for fires. The salary and allowances paid to the caretaker amounted to \$1800 per annum. The only other disbursements made by the Company during this period were the payment of taxes, interest on its indebtedness, miscellaneous office expenses which were never in excess of \$365 per annum, and the payment of \$300 per annum as partial compensation to a man who checked the correctness of the timber talley made by the Santa Cruz Lumber Company under its timber stumpage contract with the Company. During this period, the Company made no distributions to shareholders except payments upon the interest and principal upon the indebtedness previously incurred by the Company for the [71] purpose of paying taxes.

7. The property of the Company is mostly redwood timber land and the Company at no time has considered timber operations upon this property but has been hopeful it would be able to sell the property as a whole to the State of California or to the County of San Mateo. Some negotiations have been had looking toward such a sale but have been unsuccessful. This property is the only large holding of redwood timber left in this territory and, for this reason, there have been some steps

looking toward its acquisition as a park property. The Company has been unwilling to sell the property piece meal but has carried on some negotiations looking toward its sale as a whole and has on several occasions given options to prospective purchasers although no such option was given during the period from July 1, 1932 to June 30, 1936.

8. The board of directors has given considerable thought as to a means of liquidating the property but has been unable to arrive at any program by which it could be liquidated except through a sale to the County of San Mateo or to the State of California or by a program of logging contracts which the Company does not care to undertake. Under these logging or timber stumpage contracts, the property made the subject thereof is completely deforested and rendered valueless. Approximately 1500 or 1600 acres have been subjected to logging or timber stumpage contracts with the Santa Cruz Lumber Company. These acres are in an isolated section of the properties of the Company and their deforestation does not affect the value of the remaining properties as a potential park site. The area which has been cut over is a steep side hill upon which nothing could be grown and, in the opinion of the [72] president of the Company, the land is probably worth only 50c an acre after deforestation.

9. The receipt of income under the timber stumpage contracts between the Company and the Santa Cruz Lumber Company constitutes the only

difference between the activities of the Company during the period from July 1, 1932 to June 30, 1936 and its activities during the period from 1922 to 1926 when the Company was not engaged in business for Federal capital stock tax purposes.

10. The timber stumpage contracts were entered into for the purpose of providing the Company with funds to pay taxes upon its property and current expenses. The first contract was executed on April 23, 1929 and related to 480 acres of land. Under this contract the Santa Cruz Lumber Company was given the right to remove from the described land all redwood and pine timber and tanbark for which it was to pay at the rate of \$4 per thousand feet, board measure, in the case of redwood and pine and \$5 per cord in the case of tanbark, with a minimum guaranteed payment of \$10,000. The determination of the number of thousand feet, board measure, of timber cut was to be made by a talley at the tail end of the mill of the Santa Cruz Lumber Company, which talley was to be made by a talley man selected by the parties and whose expenses were to be borne equally. The Santa Cruz Lumber Company was required to proceed continuously with the removal of timber and tanbark from the lands described, and the Company had the right to inspect the operations of Santa Cruz Lumber Company and its books and records for the purpose of ascertaining that all of the provisions of the contract were complied with. This contract by its terms expired two years from its

date. A second contract was entered into between the same parties on March 10, 1930 and related to an additional 1360 acres of land and contained terms [73] similar to the contract of April 23, 1929. This contract was to run for a period of eight years provided that the Santa Cruz Lumber Company properly conducted the timber operations upon the properties of the Company. A third contract was entered into under date of January 17, 1936 between the same parties, relating to the same 480 acres covered by the contract of April 23, 1929, and provided that such acreage should be deemed to be covered by the contract of March 10, 1930.

11. The Company itself was required to take no action under any of these timber stumpage contracts, and its activities were in fact limited to the receipt of money, except that it paid the sum of \$300 per annum to Mr. A. Stoodley, the talley man who was employed jointly on behalf of the Company and the Santa Cruz Lumber Company to verify the talley made by the Santa Cruz Lumber Company upon the basis of which payments for timber and tanbark were to be made. These payments were required to be made monthly and by virtue thereof, the Company received the following sums:

Year ending June 30	Amount received
1933.....	\$21,206.70
1934.....	32,372.78
1935.....	4,625.93
1936.....	9,404.54

The portion of these receipts remaining after payment of taxes, current expenses and interest and after setting aside a reserve for future taxes, was used to retire in part the Company's indebtedness to stockholders. During this period this indebtedness was thus reduced by \$13,821.89 and subsequently was entirely paid off out of timber stumpage receipts.

12. As a result of the receipts under the timber stumpage contracts, the Company had a profit, for income tax purposes, for the period from January 1, 1932 to December 31, 1936 [74] aggregating a total of \$10,007.86, but its total deficit at December 31, 1936 was \$165,846.69.

13. The timber stumpage contracts did not contemplate that the Company itself would engage in any operations, and the Company did not in fact do so. The contracts were in substance simply a license to an operating timber company to cut timber from an isolated section of the Company's properties under an agreement to pay for the timber so cut. The land from which the timber was cut was rendered substantially valueless and the operation amounted in essence to a liquidation of the property from which the timber was cut.

14. With the exception of the supplemental agreement dated January 17, 1936 which related to the same property covered by the earlier agreement of April 23, 1929, the stumpage agreements were not negotiated during the period involved in this action and the Company's only activity in re-

lation to said contracts was the receipt of the moneys payable thereunder and the payment of its share of the expenses of the talley man.

15. The dates of the filing by the Company of its returns under the capital stock tax law and of the payment of the tax thereunder and the amount of the tax so paid are as follows:

Year ending June 30	Date Return Filed and Tax Paid	Amount of Tax Paid
1933	August 29, 1933.....	\$1250
1934	August 31, 1934.....	\$25
1935	July 30, 1935.....	\$24
1936	September 18, 1936.....	\$1000

16. The Company filed claims for refund for the capital stock taxes paid for the taxable periods ended June 30, 1933, 1934, 1935 and 1936, together with interest, on August 28, 1937, on the ground that the Company had not carried on or done business [75] during any of the taxable years in question and that, accordingly, it was not subject to the capital stock tax.

17. By registered letter dated and mailed January 26, 1938, the Commissioner of Internal Revenue notified the Company of the rejection of its claims for refund of the 1933, 1934, 1935 and 1936 capital stock taxes and interest.

18. This action was timely commenced by the Company on November 30, 1939 for recovery of the capital stock taxes paid for the taxable periods ended June 30, 1933, 1934, 1935 and 1936, together with interest. The action is based upon the same

grounds as those set forth in the claims for refund.

19. The Company has not received by way of cash or in the form of any credit the amount of capital stock taxes paid for the taxable periods ended June 30, 1933, 1934, 1935 and 1936, or any part thereof, and the Commissioner of Internal Revenue has at all times retained the amount of said taxes and all thereof.

Conclusions of Law

1. A corporation such as the plaintiff, which has reduced its activities to the ownership and holding of property, the distribution of its avails, and doing only such acts as are necessary to the maintenance of its corporate existence, and the private management of its purely internal affairs, is not carrying on or doing business within the meaning of Section 215(a) of the National Industrial Recovery Act, Section 701(a) of the Revenue Act of 1934, or Section 105(a) of the Revenue Act of 1935, commonly known as the "capital stock tax law".

2. The liability of the plaintiff for capital stock taxes must be decided by the purpose for which the corporate [76] organization was maintained, and, where, as in the present case, there was no intent during the taxable period in question or for many years prior to such period to carry on any active enterprise and the sole purpose of the corporation was to hold its timber lands and effect a sale of the whole thereof as soon as a fair price could be obtained, the proceeds to be distributed to stockhold-

ers, and there was no purpose or activity which constituted efforts or the use of capital in the pursuit of gain and profit, the plaintiff was not carrying on or doing business within the terms of said "capital stock tax law".

3. At no time during the period from July 1, 1932 to June 30, 1936 did the plaintiff carry on or do business in such manner as to subject it to the said capital stock tax. The capital stock taxes paid by the plaintiff in respect of the period from July 1, 1932 to June 30, 1936 were collected from it and retained erroneously and without authority of law and contrary to the laws of the United States relating to Internal Revenue. Plaintiff having taken all proper steps for the refund thereof is entitled to the repayment of the aggregate amount of such taxes, together with interest, as provided by law.

Direction for Entry of Judgment

The Clerk is hereby directed to enter judgment in the following form forthwith upon receipt by him of this direction:

"[Title of District Court and Cause.]

JUDGMENT

The above entitled action came on regularly for trial before the above entitled court, the Honorable Harold Louderback presiding, without a jury, on February 6, 1941, and the above named plaintiff and the above named defendant appeared by their

respective counsel. Oral and documentary evidence on behalf of the respective parties was introduced and the cause was duly submitted to the Court for decision and judgment upon written briefs [77] filed by the respective parties. The court has fully considered the matter and has made and filed its Findings of Fact, Conclusions of Law and Direction for Entry of Judgment.

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that plaintiff have and recover of and from defendant the total sum of \$2,299.00, with interest on the respective amounts making up the said total sum at the rate of 6% per annum from the respective dates of payment thereof as set forth in the complaint to the date hereof, in the amount of \$909.52, and together with interest on said total sum at the rate of 6% per annum from the date hereof to such date as the Commissioner of Internal Revenue may determine in accordance with the provisions of subsection (b) of Section 177 as amended of the Judicial Code (U. S. C., Title 28, section 284 (b)), and for its costs of suit herein incurred in the sum of \$10.00.

Dated this 13th day of August, 1941.

HAROLD LOUDERBACK,

Judge of the above entitled
Court"

Dated this 13th day of August, 1941.

HAROLD LOUDERBACK,

Judge of the above entitled
Court.

Approved as to form as provided in Rule 22.

United States Attorney.

Assistant United States Attorney. Attorneys for Defendant.

A. CRAWFORD GREENE,
HENRY D. COSTIGAN,
ROBERT MINGE BROWN,
McCUTCHEN, OLNEY, MAN-
NON & GREENE,

Attorneys for Plaintiff. [78]

Service and receipt of a copy of the foregoing Findings of Fact, Conclusions of Law and Direction for Entry of Judgment are hereby admitted this 5th day of August, 1941.

FRANK J. HENNESSY,
United States Attorney.

By ESTHER B. PHILLIPS,
Assistant United States Attorney. Attorneys for Defendant.

Filed Aug. 13, 1941. [79]

In the District Court of the United States in and
for the Northern District of California, South-
ern Division.

No. 21438-L

WESTERN SHORE LUMBER COMPANY, a
corporation,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

JUDGMENT

The above entitled action came on regularly for trial before the above entitled court, the Honorable Harold Louderback presiding, without a jury, on February 6, 1941, and the above named plaintiff and the above named defendant appeared by their respective counsels. Oral and documentary evidence on behalf of the respective parties was introduced and the cause was duly submitted to the Court for decision and judgment upon written briefs filed by the respective parties. The Court has fully considered the matter and has made and filed its Findings of Fact, Conclusions of Law and Direction for Entry of Judgment.

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that plaintiff have and recover of and from defendant the total [80] sum of \$2,299.00, with interest on the respective amounts making up the said total sum at the rate of 6% per annum from the respective dates of payment thereof as set

forth in the complaint to the date hereof, in the amount of \$909.52, together with interest on said total sum at the rate of 6% per annum from the date hereof to such date as the Commissioner of Internal Revenue may determine in accordance with the provisions of subsection (b) of Section 177 as amended of the Judicial Code (U. S. C., Title 28, section 284 (b)), and for its costs of suit herein incurred in the sum of \$10.00.

Dated this 13th day of August, 1941.

HAROLD LOUDERBACK,

Judge of the above entitled
Court.

[Endorsed]: Filed Aug. 13, 1941. [81]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Now comes the defendant, The United States of America, appearing by Frank J. Hennessy, United States Attorney for the Northern District of California, and hereby appeals from the judgment entered against it in the above-entitled case on or about August 13, 1941.

Dated: Nov. 12, 1941.

FRANK J. HENNESSY,

United States Attorney.

ESTHER B. PHILLIPS,

Assistant United States At-
torney.

[Endorsed]: Filed Nov. 12, 1941. [82]

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

The defendant above named, having taken an appeal from the judgment entered herein by the United States District Court to the United States Circuit Court of Appeals for the Ninth Circuit, hereby designates the entire record and proceedings for inclusion in the record on appeal.

FRANK J. HENNESSY,
United States Attorney.

[Endorsed]: Filed Aug. 29, 1942. [82A]

[Title of District Court and Cause.]

ORDER FOR TRANSMITTAL OF EXHIBITS
TO THE CLERK OF UNITED STATES
CIRCUIT COURT OF APPEALS

Upon motion of the United States of America, appearing by Frank J. Hennessy, United States Attorney for the Northern District of California, the Clerk of the District Court is hereby ordered to transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, all exhibits introduced in evidence upon the trial of the above entitled case, for use in the prosecution of the appeal taken to the United States Circuit Court of Appeals for the Ninth Circuit.

A. F. ST. SURE,
United States District Judge.

[Endorsed]: Filed Aug. 25, 1942. [82B]

[Title of District Court and Cause.]

ORDER EXTENDING TIME WITHIN WHICH
TO DOCKET THE RECORD ON APPEAL

It Is Hereby Ordered that the defendant herein may have to and including January 21, 1942, within which to docket its record on appeal in the above-entitled case.

Dated: Dec. 2, 1941.

A. F. ST. SURE,

United States District Judge.

[Endorsed]: Filed Dec. 2, 1941. [83]

[Title of District Court and Cause.]

ORDER EXTENDING TIME WITHIN WHICH
TO DOCKET THE RECORD ON APPEAL

It Is Hereby Ordered that the defendant herein may have to and including March 2, 1942, within which to docket its record on appeal in the above-entitled case.

Dated: January 21, 1942.

CURTIS D. WILBUR,

United States Circuit Judge.

[Endorsed]: Filed Jan. 21, 1942. [84]

[Title of Circuit Court of Appeals and Cause.]

ORDER EXTENDING TIME WITHIN WHICH
TO DOCKET THE RECORD ON APPEAL

It Is Hereby Ordered that the defendant herein may have to and including April 2, 1942 within which to docket its record on appeal in the above entitled cause.

Dated: March 3, 1942.

FRANCIS A. GARRECHT,
United States Circuit Judge.

[Endorsed]: Filed Mar. 3, 1942. [85]

[Title of Circuit Court of Appeals and Cause.]

ORDER EXTENDING TIME WITHIN WHICH
TO DOCKET THE RECORD ON APPEAL

It Is Hereby Ordered that the defendant herein may have to and including May 2, 1942 within which to docket its record on appeal in the above entitled cause.

Dated: April 2, 1942.

FRANCIS A. GARRECHT,
United States Circuit Judge.

[Endorsed]: Filed Apr. 2, 1942. [86]

[Title of District Court and Cause.]

ORDER EXTENDING TIME WITHIN WHICH
TO DOCKET THE RECORD ON APPEAL

It Is Hereby Ordered that the defendant herein may have to and including June 2, 1942, within which to docket its record on appeal in the above-entitled cause.

Dated: April 28, 1942.

CURTIS D. WILBUR,

United States Circuit Judge.

[Endorsed]: Filed Apr. 29, 1942. [87]

[Title of Circuit Court of Appeals and Cause.]

ORDER EXTENDING TIME WITHIN WHICH
TO DOCKET THE RECORD ON APPEAL

It Is Hereby Ordered that the defendant herein may have to and including July 2, 1942, within which to docket its record on appeal in the above-entitled case.

Dated: May, 1942.

CURTIS D. WILBUR,

United States Circuit Judge.

[Endorsed]: Filed June 2, 1942. [88]

[Title of Circuit Court of Appeals and Cause.]

ORDER EXTENDING TIME WITHIN WHICH
TO DOCKET THE RECORD ON APPEAL

It Is Hereby Ordered that the defendant herein may have to and including August 3, 1942 within which to docket its record on appeal in the above-entitled case.

Dated: July 3, 1942.

FRANCIS A. GARRECHT,
United States Circuit Judge.

[Endorsed]: Filed Jul. 18, 1942. [89]

[Title of Circuit Court of Appeals and Cause.]

ORDER EXTENDING TIME WITHIN WHICH
TO DOCKET THE RECORD ON APPEAL

It Is Hereby Ordered that the defendant herein may have to and including August 26, 1942 within which to docket its record on appeal in the above-entitled case.

Dated: August 13, 1942.

FRANCIS A. GARRECHT,
United States Circuit Judge.

[Endorsed]: Filed Aug. 13, 1942. [90]

[Title of Circuit Court of Appeals and Cause.]

ORDER EXTENDING TIME WITHIN WHICH
TO DOCKET THE RECORD ON APPEAL

It Is Hereby Ordered that the defendant herein may have to and including September 10, 1942 within which to docket its record on appeal in the above-entitled case.

Dated: August 26, 1942.

WILLIAM DENMAN,

United States Circuit Judge.

[Endorsed]: Filed Aug. 26, 1942. [91]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

District Court of the United States
Northern District of California

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 91 pages, numbered from 1 to 91, inclusive, which together with 1 Volume of the Reporter's Transcript, contain a full, true, and correct transcript of the records and proceedings in the case of Western Shore Lumber Company, a Corp., Plaintiff, vs. United States of America, Defendant, No. 21438-L, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of ten-dollars and ten-cents (\$10.10) and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 10th day of September, A. D. 1942.

[Seal] WALTER B. MALING,
 Clerk.
 WM. J. CROSBY,
 Deputy Clerk.

[Title of District Court and Cause.]

TESTIMONY

Thursday, February 6, 1941

Before: Hon. Harold Louderback,
 Judge.

COUNSEL APPEARING:

For Plaintiff:

Messrs. McCutchen, Olney, Mannon & Greene,
 By Robert Minge Brown, Esq.,
 Owen Jameson, Esq.

For Defendant:

Miss Esther B. Phillips,
 Assistant U. S. Atty.

Mr. Brown: If your Honor please, this is a suit by Western Shore Lumber Company, a California corporation, to recover approximately \$2300 of capital stock tax paid for the years between July 1, 1932 and June 30, 1936, inclusive.

These taxes were paid under the provisions of the applicable sections of the Internal Revenue Statutes, which were Section 215A of the National Industrial Recovery Act of 1923, Section 701A of the Revenue Act of 1934, and Section 105A of the Revenue Act of 1935. The provisions of each of those Acts are similar as to the imposition of a tax upon corporations relative to the carrying on of business. The tax was increased in the last Revenue Act from \$1 per thousand to \$1.40, but the other provisions are similar. It is the position of the plaintiff that it was [1*] not at any time during these years carrying on or doing business, it was a lumber company holding its assets for liquidation. Its assets consisted of some timber lands in Santa Cruz and San Mateo Counties. It made no investments during that period. It bought and sold no assets during the period, except some timber sold under timber cutting contracts; it carried on no business of any kind. We have two witnesses, one the President of the Company, who has been connected with the company during all of the years material in question, and for many years prior thereto, and the secretary of the company, who has taken over those

*Page numbering appearing at top of page of original Reporter's Transcript.

duties recently, but his predecessor is not available. I do not know whether Miss Phillips wishes to make a statement.

Miss Phillips: Just briefly. Counsel has stated the issues. It is a suit for refund of a capital stock tax for four years, and the issue is whether the plaintiff company was doing or carrying on business during the years in question.

Originally, the plaintiff filed its capital stock tax return and paid the tax, and subsequently filed a claim for refund on the theory that it was not doing business. The jurisdictional requirements have been met, that is, the claim for refund has been filed for the years in question. The issue in the case is exactly the same as presented in the claim for refund. There are no jurisdictional defects in the case.

The Court: The question is as to whether they were doing business during those years?

Miss Phillips: As defined under the statute, whether they were carrying on and doing business and remained within the purview of the Capital Stock Tax Statute.

Mr. Brown: I will call Mr. Wood. [2]

PERCY A. WOOD,

Called for the Plaintiff;

Sworn.

Mr. Brown: Q. What is your name?

A. Percy A. Wood.

(Testimony of Percy A. Wood.)

Q. By whom are you now employed?

A. By the Wells Fargo Bank & Union Trust Company.

Q. How long have you been in the employ of that bank, approximately? A. Since 1917.

Q. Are you an officer of the Western Shore Lumber Company, the plaintiff in this case?

A. I am the President of the Western Shore Lumber Company.

Q. When were you elected president of the company? A. I think in February, 1936.

Q. Who was your predecessor in office?

A. Timothy Hopkins.

Q. Is Mr. Hopkins now living?

A. Timothy Hopkins died January 1, 1936.

Q. Are you a director of the company?

A. Yes.

Q. When were you elected a director?

A. I think in February of 1925.

Q. Have you been continuously a director since that time? A. I have.

Q. How long had Mr. Hopkins served as President of the Company?

A. I cannot answer that definitely, but for many, many years prior to the time that I became connected with the company, and all the time during the time I was a director up to the time of his death.

Q. What occasion did you have to consult with Mr. Hopkins regarding the affairs of the Western Shore Lumber Company?

(Testimony of Percy A. Wood.)

A. I became a director of the Felton Company in 1925, and the Felton Company was a stockholder of the Western Shore Lumber Company; they also had certain stock in the Western Shore Lumber Company, and [3] from that time I became associated on behalf of the Felton Company with the Western Shore Lumber Company.

Q. What was your connection with the Felton Company?

A. I was a director at that time.

Q. On whose behalf were you elected a director?

A. I was elected a director to fill the place of Timothy Hopkins, who had resigned as a director of the Felton Company.

Q. In the course of your employment by the bank did you have any occasion to watch the progress of the Western Shore Lumber Company?

A. Yes. As a matter of fact, I conferred, when there was any reason to confer, with Mr. Hopkins, or he conferred with me relative to the Western Shore Lumber Company and its property.

Q. Were there any trusts in the bank which held stock in the Western Shore Lumber Company?

A. Yes, two.

Q. Which trusts are those?

A. There is the Timothy Hopkins Trust, and another trust, and then there is the trust of Mrs. Kate Felton Elkins, which owns a majority of the stock in the Felton Company.

(Testimony of Percy A. Wood.)

Q. When was the Hopkins trust established?

A. March, 1934.

Q. How many shares of stock in the Western Shore Lumber Company did the Hopkins trust own?

A. 4551 shares.

Q. When was the Elkins trust established?

A. In January, I think, of 1925.

Q. How many shares did it own?

A. The Felton Company held 1914 shares which it owned outright, and had 1275 shares which it held as pledgee.

Q. What connection do you have with the administration of those trusts?

A. They are directly under my supervision.

Q. What kind of supervision did Mr. Hopkins exercise over the [4] affairs of the company prior to his death?

A. Well, as a matter of fact, there was not a great deal of supervision necessary. The company owned a little over thirteen thousand acres of timber land in San Mateo and Santa Cruz Counties, which it had owned for many, many years. As a matter of fact, there was hope of selling the property as a whole; we had no intention of selling it by part and parcel, and would like to liquidate the entire company, so there was very little supervision in connection with it.

Q. How frequently would you say that you communicated with Mr. Hopkins regarding the affairs of the company?

(Testimony of Percy A. Wood.)

A. I would say not more than probably twice a year.

Q. What were the activities of the company when you became a director?

A. Well, the activities of the company were merely holding the title to the timberland. The company had no activities.

Q. Was the timberland the sole assets of the company?

A. The timberland, on which there were a few shacks, I think on what is known as Section 11, and they had a bank account.

Q. Do you have any idea how much was deposited in the bank account?

A. I have not the least idea at the present time.

Q. What kind of timber was on the land owned by the company?

A. Mostly redwood, and what is now termed fir—the predominant timber was redwood.

Q. What was the company source of income prior to 1932?

A. As I remember, the company practically had no income; it was very, very small, as a matter of fact.

Q. How did the company pay taxes on its property during that period?

A. It levied assessments on its stockholders.

Q. Did the company have any indebtedness prior to 1932?

A. It had an indebtedness to its stockholders

(Testimony of Percy A. Wood.)

for money which was [5] advanced by the stockholders with which to pay the taxes.

Q. Has that indebtedness been paid off?

A. It is now all paid, yes.

Q. Do you have any idea what that indebtedness amounted to as of say, July 1, 1932?

Miss. Phillips: Do not the books show the exact details on this?

Mr. Brown: Yes, they will. I merely wanted to show for what purpose this indebtedness was incurred, and whether or not it was a specific amount.

A. I could not answer what the indebtedness was in 1932. When Mr. Hopkins died, on January 1, 1936, it was \$44,000, and since 1936 it has all been paid off.

Q. When you became a director of the company was it engaged in any lumber operations?

A. No.

Q. During the time you have been a director has there been any discussion of timber operations on behalf of the company?

A. No, it has never been the intent or purpose of the company to carry on lumber operations in any way.

Q. During the period prior to 1932 were there any negotiations looking toward the sale of the property?

A. Yes, there were negotiations with a firm I believe from Indianapolis, the name of which I have forgotten at the moment, and in fact the sale was

(Testimony of Percy A. Wood.)

almost consummated, the contract was almost completed, when a flood went through the part of the country where the firm operated in the Middle West, and wiped the company out, and that was the end of the negotiations.

Q. Has the company been willing to sell this property piecemeal? A. No.

Q. Why has the company been unwilling to sell it piecemeal? [6]

A. Because it is a very large body of timber, 13,000 acres, between Pescadero and Butano, just to the north of the California Big Basin. Mr. Hopkins and the directors have thought many years, they hoped it would be a part of the Big Basin Park, and it was the hope of the directors and also some of the residuary beneficiaries under the trust, like Stanford University, that the property could be sold to the State of California, or to San Mateo County.

Q. Did the company sell any of its real estate during the period from July 1, 1932 to June 30, 1936? A. No.

Q. What did you sell during that period?

A. Well, we sold some timber, as a mater of fact, on certain isolated sections, which were not connected with the main body of the property.

Q. How was that property sold?

A. It was sold under a regular timber contract to the Santa Cruz Lumber Company.

(Testimony of Percy A. Wood.)

Q. You say a regular lumber contract, what do you mean?

A. I mean there was a contract made with the Santa Cruz Lumber Company, permitting them to cut timber at so much per thousand.

The Court: Q. In other words, you designated an area in which they had the right to cut timber, and they paid you so much a thousand feet for what they actually cut down and took away?

A. That is correct.

Mr. Brown: Q. Mr. Wood, I show you a contract dated March 10, 1930, between the Western Shore Lumber Company and the Santa Cruz Lumber Company, and a supplemental agreement dated January 17, 1936, between the same companies. Are those the contracts to which you refer?

A. They are.

Mr. Brown: I would like to introduce these contracts in evidence.

The Court: Are there two contracts? [7]

Mr. Brown: Yes, one is the original contract and the other is a supplemental contract.

The Court: The original contract will be marked "Plaintiff's Exhibit 1," and the supplemental contract will be marked "Plaintiff's Exhibit 2."

Mr. Brown: We would like to withdraw the originals upon substitution of photostats of the originals.

The Court: There is no objection on the part of defendant?

(Testimony of Percy A. Wood.)

Miss Phillips: No objection.

The Court: That may be done.

(The documents were marked, respectively, Plaintiff's Exhibits 1 and 2.)

[Plaintiff's Exhibits Nos. 1 and 2 are set out at pages 188 and 204 respectively of this printed record.]

Mr. Brown: Q. Has the company made any investments during that period from July 1, 1932 to June 30, 1936?

A. Well, not what I would call investments. We bought supplies for letters that had to be written.

Q. You have not invested any money with a view of earning income from it? A. No.

Q. What did you do with the money received from these timber contracts?

A. The receipts from the timber contracts were largely used to pay taxes.

Q. Was there any balance left over after the payment of taxes?

A. Yes, that balance was carried over; rather than levy assessments to pay taxes on the stockholders, we carried the balance over to pay taxes.

Q. Has there been any distribution to shareholders from the proceeds of these timber contracts?

A. I would not say from the proceeds of these timber contracts, no.

Q. What provision was made under these timber contracts for verifying the sums payable to the company?

(Testimony of Percy A. Wood.)

A. Well, we employed [8] a Mr. A. Stoodely, of Santa Cruz, who was a very competent timber man, as a matter of fact, to check the operations of the Santa Cruz Lumber Company, to see that we got the right amount that was coming to us.

Q. Do you know what kind of a check he made on the cutting operations?

A. Yes, Mr. Stoodely first checked their inventory before they started cutting, and then he made out what we would call a tally, as the lumber went through, and they would check the inventory against it, and that is the way the checks were made.

Q. What was Mr. Stoodley's salary?

A. Mr. Stoodley received \$25 a month.

Q. Did the company exercise any other supervision over the timber cutting operations?

A. None at all.

Q. Was there any connection between the Western Shore Lumber Company and the Santa Cruz Lumber Company?

A. Except as to the matter of the contract for the cutting of timber, that is all. There is no stock ownership or anything of that kind.

Q. How has that company safeguarded the property during the period to June 30, 1936?

A. For some years, as a matter of fact, we had a man there named Mr. Bennett, who was an elderly gentleman, who lived on Section 11; he was simply a caretaker, who tried to look out for fires, for the reason at that time the fire patrol was not put

(Testimony of Percy A. Wood.)

in the necessary outlying places, so fires were readily discovered, so Mr. Bennett was simply looking out for fires and seeing that the trails were kept up.

Q. Was he employed when you became a director of the company? A. Yes.

Q. When did he resign?

A. I think he resigned in 1937.

Q. He was employed all the period from July 1, 1932 to June 30, [9] 1936? A. Yes.

Q. What was his compensation?

A. He received \$125 a month as salary and \$25 a month as an allowance for his horse.

Q. Did the company have any other employes during the period from July 1, 1932 to June 30, 1936?

A. Well, we had Mr. Stoodely to check the timber, and tally it, and Mr. Bennett, who was the watchman down there, and of course the Secretary of the company here in San Francisco.

Q. What were the duties of the Secretary?

A. The duties of the Secretary are merely to keep the books and attend the meetings of the board of directors, and write up the minutes.

Q. What was the compensation of the Secretary, approximately?

A. I think the compensation of the Secretary was \$25 a month.

Q. Was Mr. Hopkins paid any compensation?

A. No.

Q. Has the dissolution of the Western Shore

(Testimony of Percy A. Wood.)

Lumber Company ever been discussed at any of the meetings of the Board of Directors which you attended?

A. No, we had never discussed the question of dissolution, but we have discussed many times the question of what progress we could make toward liquidation of the company.

Q. Has it been the practice of the company to refer all matters of importance to the board of directors? A. Yes.

Q. Have you attended all meetings of the board of directors?

A. To the best of my recollection I have attended all meetings; in fact, our meetings are very infrequent.

Q. Are you familiar with the minutes of the meetings of the board of directors? A. Yes.

Mr. Brown: I am asking him the question about the minutes, because there is no one else that knows about them. We will introduce the books by the Secretary of the company, but he was not [10] secretary at that time.

Q. In your opinion do the minutes recorded in the book of minutes reflect all actions taken by the board of directors? A. Yes.

Q. Were there any meetings of stockholders during the period from July 1, 1932 to June 30, 1936?

A. I think there were one or two meetings of stockholders,—I could not say definitely—simply for election of directors and officers.

(Testimony of Percy A. Wood.)

Q. Apart from the receipt of income under the contracts you have previously mentioned, did the company have any source of income during the period from July 1, 1932 to June 30, 1936?

A. Not in the sense of income—no other income from any other source except possibly it might have sold a few steel cables for junk—that was out on Section 11—it was a very small item. As a matter of fact, it only amounted to a few hundred dollars.

Q. You mentioned the company had some cash on deposit. Did it receive any interest on that cash?

A. A portion of that was deposited in a savings account, on which it received interest.

Q. Did you invest any of those funds in any securities or bonds? A. No.

The Court: Did that income of the company go on during the entire four years? A. Yes.

Q. During all of that period it was going on?

A. Yes, that is right.

Mr. Brown: I believe that is all.

Cross Examination

Miss Phillips: Q. Mr. Wood, the Western Shore Lumber Company was organized about the close of 1905, was it not?

A. I think that is correct.

Q. And during that time, or at the start of its career it [11] acquired timber lands both in Santa Cruz and San Mateo Counties? A. Yes.

(Testimony of Percy A. Wood.)

Q. The acreage was approximately 13,000 in San Mateo County, and 550 in Santa Cruz County?

A. That is approximately correct.

Q. And approximately 480 acres were sold of the Santa Cruz acreage in 1920, isn't that right?

A. I don't remember.

Q. Would it be possible to ascertain that? I would like to have the exact acreage of the company at the start and then whatever sales have been made, so as to know exactly what its acreage was.

A. You mean the acreage as of today?

Q. Yes.

A. I can give you fairly accurately, I think—I won't say that this is absolutely accurate to the acre, but it is approximately 13,239 acres.

Q. Won't you look up your records for 1920 and ascertain if this is not true, the company sold 480 acres for \$38,400, at the rate of \$80 per acre?

A. The records that I have would not show that. I would have to look at the records of the company.

Q. The books of the company would show that?

A. Mr. Nelson, the Secretary, has the books of the company. Nothing has been sold that I know of since I became a director in 1925.

Q. I am asking you as to the fact; surely you can find that out?

A. The books will show that.

Q. Do you know under what circumstances the company acquired this land in 1905?

A. Well, I can give you what I understood to be the theory of their acquiring it.

(Testimony of Percy A. Wood.)

Q. I would like to have more definite information that what you understand or think. How did this company acquire, at the start of its career in 1905, over 13,000 acres of timber land? Was it a gift?

A. No. I can tell you the historical background of it, I mean to the best of my knowledge as I have it. [12]

Q. Do your books show? Was it a purchase?

A. Yes, the property was actually purchased.

Q. It was actually purchased? A. Yes.

Q. The articles of incorporation which are attached to the complaint show who were the stockholders and how they started the actual purchase of this land?

A. The actual purchase of the property.

Q. Did they ever build a mill?

A. Oh, sometime prior to—I don't know when, but they did build a shingle mill on what is known as Section 11; they operated, as I understand it, about thirty days, and it was then discontinued.

Q. That was in 1920, was it not?

A. No, that must have been prior to 1920.

Miss Phillips: I am afraid the witness does not know enough about it. Is there anybody here that can give exact answers? I mean there is no use wasting time with this witness on that.

Mr. Brown: The period prior to 1920, I am not sure whether it is material to the question of whether they were doing business in 1932.

(Testimony of Percy A. Wood.)

Miss Phillips: Oh, yes.

Mr. Brown: This company was run by its President, Mr. Hopkins, without compensation, and he is dead. I believe the witness has testified that he had almost complete supervision of the company. The Secretary is also dead. Mr. Wood became a director in 1925.

Miss Phillips: That is all right, but the company has records.

Mr. Brown: We will be glad to get the records for whatever period you suggest.

Miss Phillips: The question whether a company is doing business during any one year does not depend exactly on evidence [13] of its activities during that year. It is possible to go back into the history of the company for many years.

Mr. Brown: That is correct.

Miss Phillips: After all, it is a question of relevancy and pertinency, and the question of whether a particular company is doing business is a question of fact, of what it was organized for and how it was carried on during all of its preliminary career.

Mr. Brown: I think it is also relevant to point out that there was a capital stock tax during the years 1922, 1923, 1924 and 1925, and this company paid the capital stock tax for those years and filed a claim for refund for those years, and that was granted, and the Commissioner paid the plaintiff.

Miss Phillips: This witness has just testified

(Testimony of Percy A. Wood.)

on direct examination for a period of years they cut no timber, made no sales. He has testified that in the years 1932 to 1936 they were cutting timber and selling it right along during those years. He has said in 1925 they were not cutting timber. Of course, if they were not cutting or selling that is a different thing.

Q. Mr. Wood, do not the books of the company show that during the entire history of this company it has been selling redwood and pine timber?

A. I do not think so. There is an historical background as I know it, I won't say as I know it, but as I understand it.

Miss Phillips: Let us not have hearsay on this. I am not saying the books of the company ought to be excluded because the people who kept them are dead. Of course, I have no doubt those books of the company were accurately kept.

Mr. Brown: We would be glad to introduce them. I do not think 1920 is material to what happened in 1932. [14]

Miss Phillips: Q. The company maintains a depletion schedule, does it not? A. Yes.

Q. And charges in the income tax return year to year the amount of redwood and timber taken off the land, which to that extent is a depletion of capital? A. That is right.

Q. I want to ask you if it is not a fact that during the years 1909 and 1910, during that period, the Western Shore Lumber Company was not selling its redwood timber?

(Testimony of Percy A. Wood.)

A. In 1909 and 1910?

Q. Yes. A. I don't know.

Q. Would you say, Mr. Wood, the redwood and pine was of a good quality?

A. When you mention quality, I would say it is, compared with what you would call Northern redwood, not of first class quality. The timber, as I understand it, in Santa Cruz and San Mateo County is sparser and not as thickly grown as it is in Eureka, and Humboldt County.

Q. Is it easy of accessibility?

A. Not particularly.

Q. Not particularly? A. No.

Q. Isn't it true that it sold annually redwood timber from these lands?

A. Not annually. The only sales it made are the ones represented by these contracts with the Santa Cruz Lumber Company.

Q. A stumpage contract—the sale of standing timber, the person buying it to take it out, is that correct? A. Yes.

Q. A stumpage contract is a sale of standing timber? A. Yes.

Q. The timber was actually sold and the proceeds credited to your company's operations during that year?

A. The timber, of course, was standing timber, which was sold to the Santa Cruz Lumber Company, and the Santa Cruz Lumber Company, as a lumber company, in its operations cut the timber

(Testimony of Percy A. Wood.)

and manufactured it into lumber. The Western Shore Lumber Company had nothing to do [15] with the cutting of it, or the manufacture of it. All it had to do was to check up the amount that it was entitled to on a stumpage basis.

Q. Would you be able to say what portion of the history of the company since 1905 it has carried its affairs in the same way as it did from 1932 to 1936?

A. I could only tell you what I have been told historically. I can tell you from 1925, when I became a director, what happened; I mean from 1925 on the company has done nothing except in connection with these contracts.

Q. The first contract offered in evidence is dated in 1930, and the supplemental contract is 1936. Now, am I to understand that from 1925 to 1930 there were other contracts of the same sort?

A. I think there may have possibly been a contract in 1929. I may be mistaken as to the date 1929, or 1930, but from 1925 up to that time there were no other contracts.

Q. But were there any contracts at all?

A. No.

Q. That is, from 1925 to 1930 there were no stumpage contracts? A. No.

Q. Is that right?

A. That is correct.

Q. You did not make any sales of timber during that period? A. No.

Q. In 1930 you began selling timber?

(Testimony of Percy A. Wood.)

A. On the isolated property.

Q. Which tract was that?

A. I could give you a description from the map.

Q. Is it described in the contract?

A. It is described in the contract.

Q. Then during the years 1920 to 1925 you are not able to say whether there were any contracts or not?

A. There were not in 1925 up to 1930.

Q. Now, as to 1920 to 1925, do you know whether there were any contracts then?

A. I do not know. [16]

Q. Then take the period between, let us say, 1905 and 1913, that period in there, would you know anything about that? A. No.

Mr. Brown: Your Honor, I object to these questions. I have not understood your Honor to rule whether 1912 or 1913, or 1910, or 1929, or 1920 relevant to this matter. The regulations recognize that a corporation may have been doing business in the past and nevertheless not be doing business now.

Miss Phillips: That is quite true. Counsel and I will not have any argument about that. My position is this, here is a company that has been running thirty-five years, and if we are to take what the witness says on the stand as a fact, in all of the time of its history never has it done business. The land was bought 35 years ago, and he testified it was purchased. It was not a gift. I think I can

(Testimony of Percy A. Wood.)

show that it has been logged for redwood year after year. The witness has just stated that there was no contract, they were holding it, obviously during that time they were not doing business.

Mr. Brown: You said they were not doing business?

Miss Phillips: During the period from 1905 on there have been periods in which it has been selling timber, at a profit. Under what circumstances can we say he is not doing business?

The Court: I can see where it may be relevant to trace it right through.

Miss Phillips: That is what I am trying to do.

The Court: I think it is competent to show what this corporation has been doing and is likely to have as a consequence of that.

Miss Phillips: Q. You have mentioned the fact that there were assessments to pay taxes and running expenses. Do you know how many assessments have been levied in the history of the company? [17]

A. In the history of the company?

Q. Yes. A. No.

Q. I would like to ask you if you won't examine the books of the company and see if it is not true that it had assessments during the years 1925 and 1929 of 50 cents per share, during the year 1927 assessments of 50 cents per share, during the year 1926 65 cents per share, and during the year 1928 60 cents per share, and if it is not

(Testimony of Percy A. Wood.)

a fact that those are the only assessments levied against the stockholders during the entire history of the company. I would like to ask if that can be checked to ascertain whether that is the fact.

A. So far as I know those are correct as to the assessments levied between 1925 and up to the date of the last one. As to the assessments levied prior to 1925 I have not any knowledge, at all.

Q. Then the question would be whether or not there had been any other assessments other than those I named?

A. There have been no assessments from the date of the last one you mentioned up to the present time, but from 1925 back I do not know.

Q. My question is whether or not it cannot be ascertained whether there were any assessments between the year 1905, when it started, and 1925, when the first assessment was made?

A. I think the books will show that.

Q. Has there ever been a resolution of the stockholders directing a liquidation of the company?

A. No.

Q. Has there been any resolution by the board of directors for liquidation?

A. No.

Q. It is true, is it not, that at one time in its history the stockholders made loans to the company in proportion to their ownership?

A. That is correct.

Q. Can you state at this time when those loans were made? [18]

(Testimony of Percy A. Wood.)

A. I think the loans were made prior to 1925.

Q. And they were made in proportion to their stock ownership?

A. In proportion to their stock ownership.

Q. Your books of account will show interest payments to stockholders during that period?

A. That is correct.

Q. And those would be the interest payments made to stockholders upon the loans they made?

A. I think the books will show there was quite some period, as a matter of fact, that there was no interest paid on the amount advanced by stockholders, but the amount of interest computed on those advances, and those were simply added to the advances to increase the principle of them.

Q. Was it your testimony on direct examination that those loans have all been paid off?

A. They have all been paid off since 1938.

Q. You have testified on direct examination that there were from time to time some years in which there was a surplus which was carried over into the balance sheet of the company?

A. I would not say a surplus. Let me put it this way: Under these contracts with the Santa Cruz Lumber Company they made certain payments. Those funds were used, as a matter of fact, to pay taxes with. Naturally, there would be a balance carried over from one year to the other, which would be a surplus, a cash balance—there was a cash balance carried over because we do not know

(Testimony of Percy A. Wood.)

how long this thing would run or whether the property would be sold, or when it would be sold, so we would have cash on hand to pay taxes with, so we would not have to levy more assessments on stockholders.

Q. I accept your correction of cash balance; it is a much more correct term. The cash balance was carried over from year to year?

A. Yes. [19]

Q. You mentioned all of the stockholders have been paid back their loans. Were they paid off out of this accumulated cash balance?

A. They have been paid out of funds received from the Santa Cruz Lumber Company, on the contract made in 1938.

Q. Was that for a sale of more timber, or a sale of land?

A. The sale of more timber. That was in 1938.

Q. A stumpage contract, or a similar contract as the preceding ones?

A. Very similar.

Q. So that we are to understand, then, that the loans of the stockholders have in fact been paid out of the accumulated cash balance of money received from the stumpage contract from the sale of timber?

A. I would distinguish between accumulated cash balance, because I think, if my recollection is right, that our cash balance was not very much at the time we made this contract with the Santa Cruz Lumber Company in 1928, and out of pay-

(Testimony of Percy A. Wood.)

ments received under that contract the indebtedness has been paid off.

Q. Have you ever retired any of your stock?

A. No.

Q. There are still outstanding how many shares of stock? A. 10,000 shares.

Q. At a par value of how much?

A. \$100 a share.

Q. Or \$1,000,000? A. Yes.

Q. Your books will show the extent of accumulated surplus? A. Yes.

Q. You mentioned the fact that there was a man who was paid as a tally man; your timber man was really representing your interest under the contract? A. That is correct.

Q. To make sure that whatever timber was cut you got credit for it, and you got the proper purchase price? A. Yes.

Miss Phillips: I think that is all. [20]

Re-direct Examination

Mr. Brown: Q. Mr. Wood, Miss Phillips asked you about any other timber contracts, and I believe you testified that there may have been a contract in 1929. I would like to show you an agreement dated April 23, 1929, between the Western Shore Lumber Company and the Santa Cruz Lumber Company, and ask you if that is the contract to which you referred.

A. That is correct.

Mr. Brown: Your Honor, this contract is at-

(Testimony of Percy A. Wood.)

tached as an exhibit to the complaint in this action, and I believe that it is satisfactory to Miss Phillips to stipulate that the copy so attached is a correct copy.

Miss Phillips: That will be all right, I have no objection to that.

Mr. Brown: Q. Apart from the three timber contracts which have been introduced in evidence, did the company execute any other contracts during the period you were a director up to and including June 30, 1936?

A. To the best of my recollection there was no other contract executed.

Q. Do you have any information of how many acres of land are covered by these timber contracts?

A. As a rough estimate, I would say approximately 1600 acres of timber, which, as I say, is isolated from the large body of timber, which is all of one body.

Q. Can you give a brief description of the physical characteristics of that land?

A. The physical characteristics—as a matter of fact the Santa Cruz Lumber Company has a plant, a mill on Section 27, in Township 8 South Range 3 West, which is, you might say, it is almost in a canyon. This section on which this timber was sold is rough, rises very abruptly. It is a side hill, very precipitous; that is were the timber was removed from by the Santa Cruz Lumber Company. [21]

Q. Is this body of timber separated from the remaining timber in any way?

(Testimony of Percy A. Wood.)

A. Oh, yes, completely isolated from the remaining body of our timber, what is known as the Pescadero and Butano timber.

Q. In your opinion did the sale of this timber impair the value of the remaining holdings?

A. Not in any way. As a matter of fact there was property between the section we owned that had been timbered off by the Santa Cruz Lumber Company, and our main body, that was owned by the Spring Valley Water Company, I believe.

Q. Have you made any effort to sell the main body of timber?

A. Well, not particularly, no, because as a matter of fact, as I say, we hope that the State of California will take a very large part of the property in connection with the California Redwood Basin, or it possibly may be that San Mateo County may take what is known as the Pescadero portion of the property.

Q. Have there been any negotiations?

A. With San Mateo County, yes.

Q. Have there been any negotiations with the State of California?

A. Mr. Drury, who is Secretary of the California Redwood Association, from time to time has been endeavoring to secure an appropriation by the State of California with which to buy this timber.

Q. For what period of time?

A. That has been going on for a considerable

(Testimony of Percy A. Wood.)

number of years, as far back as I can remember, 1925. As a matter of fact, the State now has made an appropriation to buy another tract of land there, which is not owned by the Western Shore Lumber Company, but was owned by Timothy Hopkins.

Q. Did those negotiations continue during the period you have been affiliated with the company?

A. That is correct.

Q. What is your understanding of the purpose for which the Western Shore Lumber Company is organized? [22]

Miss Phillips: I am going to ask, your Honor, that the witness testify of his own knowledge.

Mr. Brown: I am asking for his understanding.

The Court: What his understanding is is a conclusion, and not his knowledge.

Mr. Brown: I will reframe the question.

Q. What is your understanding, based upon discussions with the Board of Directors of the purpose for which the company is organized?

A. The company, if I remember correctly, was organized in 1905, by Timothy Hopkins, who was then treasurer of the Southern Pacific Railroad, and Senator Felton, and several other associates, and they thought that the Southern Pacific Railroad Company was going to build a railroad going south from San Francisco to Santa Cruz, and I assume they thought if the railroad did go through the property they would operate this property. In fact, the railroad was never built.

(Testimony of Percy A. Wood.)

Q. Was there any discussion of the railroad going through during the period you were a director? A. No, none at all.

Q. You have referred to some assessments levied on the stockholders. Do you know for what purpose those assessments were levied?

A. The assessments were levied for the purpose of paying taxes on the real estate.

Q. Do you know for what purpose the indebtedness to which you referred was incurred?

A. The money which was loaned by the stockholders was also loaned to the company for the purpose of paying taxes on the real estate.

Q. Has the company sold any of its acreage during the period you have been a director?

A. No.

Q. When you refer to timber sales, then you refer only to the timber contracts that have been introduced in evidence? [23]

A. That is correct.

Q. Have the activities of the company changed their character any during the period you have been a director? A. I would say no.

Q. What differences, if any, were there between the manner in which it transacted its business when you became a director and the manner in which it transacted it during the year from July 1, 1932 to June 30, 1936? A. No difference.

Mr. Brown: That is all.

(Testimony of Percy A. Wood.)

Recross Examination

Miss Phillips: Q. You don't know, yourself, when the loans of the stockholders were made, and how much? A. No.

Q. That would be a matter for the secretary?

A. That is correct.

Q. What section did you say the mill of the Santa Cruz Lumber Company was located on?

A. I think the mill is on Section 27, Township 8 South, Range 3 West.

Q. Then going back to your understanding as to why this company was organized, as I understand it, then, it was organized as a business venture, that is, the land was purchased with the idea of developing it in case the railroad went through: is that right? A. That is right.

Q. That represented an actual investment of capital? A. Yes.

Q. On which the investors hoped to get a business return? A. That is correct.

Miss Phillips: That is all.

FRANK C. NELSON,

Called for the Plaintiff; Sworn.

Mr. Burns: Q. What is your name?

A. Frank C. Nelson.

Q. By whom are you employed?

A. I am employed by Lester, Herrick & Herrick.

(Testimony of Frank C. Nelson.)

Q. What is the nature of your business?

A. Certified Public Accountant.

Q. How long have you been a certified public accountant? A. Since 1925.

Q. What connection do you have with the Western Shore Lumber Company?

A. I am secretary of the company.

Q. When did you become secretary?

A. In March, 1937.

Q. What connection do you have with auditing the books of the Western Shore Lumber Company?

A. The firm to which I belong make an audit annually.

Q. When did you commence the making of such audits?

A. In March, 1937, when I was appointed secretary.

Q. When you became secretary were the books and records of the company turned over to your custody? A. They were.

Q. Do you have the original books and records which were received by you in your possession in court?

A. I have a number of them—not all of them in court, but I have a great number.

Q. Which records have you now?

A. I do not have the capital stock records with me, and there are of course a number of papers and cancelled checks and bank statements and documents of that sort, which I do not have with me.

(Testimony of Frank C. Nelson.)

I have a ledger which goes back to 1905; I have a cash ledger which goes back to 1933.

Q. Do you have the records of all of the receipts and disbursements during the period from July 1, 1932 to June 30, 1936? A. I do, yes.

Q. Can you tell us what the receipts in the year from July 1, 1932 to June 30, 1933, were?

A. Can I look at my records?

Q. Yes.

A. From July 1, 1932 to June 30, 1933 the receipts consisted of \$21,206.70, from a stumpage contract of the Santa Cruz Lumber Company, and interest on the bank account of \$451.44 [25] making a total of \$21,658.14.

Q. What were the disbursements of the company during that year?

A. The disbursements during that period were taxes of \$6024.75, which included property taxes of \$5998.74. State Franchise Tax of \$25, and Federal taxes on bank checks was \$1.28; interest on the loan of stockholders was \$4011.05, Trail Making Expense \$1650, Secretary and Secretary's Expenses \$550.70, and some miscellaneous expenses, including office rent, accounting service, etc., amounting to \$364.60.

Q. Do your records show what was the amount of the indebtedness to stockholders as of July 1, 1932?

A. The indebtedness to stockholders on July 1, 1932 in the aggregate would be \$66,850.75.

(Testimony of Frank C. Nelson.)

Q. Do the records indicate whether the interest paid during that year covered prior years?

A. I would have to check that, Mr. Brown, but I can do that in just a moment, I believe. The total interest paid during that period was \$4,011.05, and that would be approximately 6 per cent., which was the rate of interest on \$66,850.75, so I presume it was one year's interest.

Q. Do you have the records of the receipts and disbursements of the year from July 1, 1933 to June 30, 1934?

A. Yes, I have.

Q. What were the receipts of the company during that period?

A. The receipts were \$32,372.78, under the stumpage contract with the Santa Cruz Lumber Company, and interest on the savings account \$841.56.

Q. What were the disbursements during that period?

A. The disbursements during that period were repayment of principal of outstanding stockholders' loans of \$13,821.89, Interest on loans \$5613.73, Taxes \$5610.86, an item called "Train maintenance," including the salary and expense of Mr. Stoodely, I believe, was \$1800, expense of secretary \$275, and miscellaneous expenses including [26] office rent aggregated \$364.94.

Q. What were the receipts during the year from July 1, 1934 to June 30, 1935?

A. The receipts were \$4625.93 under the Santa

(Testimony of Frank C. Nelson.)

Cruz Lumber Company contract, \$562.05 interest on savings account, and \$50 received from salvage of equipment on an old shingle mill.

Q. What were the disbursements during that period?

A. The disbursements were interest on loans \$4242.94, taxes \$4310.22, Trail maintenance \$1800, secretary expenses \$300, and miscellaneous expenses, including office rent in the total amount of \$274.

Q. What were the receipts for the period from July 1, 1935 to June 30, 1936?

A. The receipts were \$9404.54, received on the Santa Cruz Lumber contract, interest on savings account \$165.58, sale of junk of \$158.38.

Q. Do the records indicate what junk is referred to?

A. I can ascertain in just a moment. It is machinery of shingle mill.

Q. What were the disbursements during that year?

A. The taxes were \$4909.05, interest on loans \$3086.50, Trail maintenance \$1800, and Secretary expenses \$300, and General expenses of \$322.

Q. What was the balance deposited in the savings account on behalf of the company during the year ending June 30, 1933?

A. On June 30, 1933 the balance in the savings account was \$33,592.86.

Q. What was that balance for the year June 30, 1934?

(Testimony of Frank C. Nelson.)

A. On June 30, 1934 the balance in the savings account was \$34,434.42.

Q. What was it for the year ending June 30, 1935?

A. On June 30, 1935 the balance was \$34,996.47.

[27]

Q. And for June 30, 1936?

A. On June 30, 1936 the balance in the savings account was \$32,162.05.

Q. Do you have with you the original minute books of the corporation? A. I have not.

Q. Will you get them, please? A. Yes.

Q. Do those books contain a complete record of all minutes of meetings of the board of directors during the period from July 1, 1932 to June 30, 1936?

A. They are the only records I have.

Q. Those are the official books that were turned over to you? A. Yes.

Q. Do they contain a record of the stockholders' meetings during that period? A. They do.

Q. Were there any meetings of stockholders?

A. From 1933 to 1936?

Q. From July 1, 1932 to June 30, 1936.

A. No minutes of any stockholders' meetings.

Q. Do those books contain the minutes of the meetings of the stockholders prior to that time?

A. Yes, they do.

Q. They are supposed to be the stockholders' minute books? A. Yes.

(Testimony of Frank C. Nelson.)

Mr. Brown: I would like to offer these original minute books in evidence as Plaintiff's Exhibit 3, under a stipulation that when Miss Phillips has had an opportunity of verifying the accuracy of the minutes as attached to the complaint we may withdraw them.

Miss Phillips: That is satisfactory.

The Court: Maybe you had better put them in as Exhibit A for identification. It is not really an exhibit, it is not going to be displayed to me. It is going to be made available, under the control of the Clerk. [28]

Mr. Brown: Copies of all of these minutes are attached to the claims for refund which are attached to the complaint, which Miss Phillips' expert can check, and when they are checked we would like permission to withdraw them.

The Court: They will be marked Plaintiff's Exhibit A for identification.

Q. Do I understand you to say they had no meetings from 1933 to 1936, inclusive, of the stockholders? A. Yes.

Q. No stockholders' meetings? A. Yes.

Q. How about the election of directors?

A. The same directors carried right through.

Q. In other words, there was an election until their successors were qualified?

A. I presume so.

The Court: Is that correct?

Mr. Brown: Yes. May it be stipulated that the minutes attached to the complaint are correct?

(Testimony of Frank C. Nelson.)

Miss Phillips: I have not seen the original minutes, but I am quite satisfied they are, but as long as they are here and filed for identification they can be checked. I think I can feel sure the books of the company were properly kept, I am not questioning the bookkeeping, but I want merely to check them.

Mr. Brown: You will stipulate unless otherwise notified they will be deemed correct?

Miss Phillips: Yes. I think it will be more satisfactory to file a written stipulation. I think that is the better way to have it, rather than in more or less nebulous form.

Mr. Brown: All right. That is all with this witness.

Cross Examination

Miss Phillips: Q. Mr. Nelson, you have stated that there [29] were no stockholders' meetings from 1932 to 1936. Do you know how many stockholders there were?

A. I have not a list of the stockholders here, Miss Phillips, so I could not say.

Q. It was a company in which the stock was closely held—most of the directors represented most of the stockholders?

A. I believe there are only five or six stockholders, but I would not be sure about that.

Q. I do not think I got some of your figures for the receipts from stumpage contracts. Can you read them back to me again?

(Testimony of Frank C. Nelson.)

A. Yes, the stumpage contracts in the year ending June 30, 1933 were \$21,206.70. In the year ending June 30, 1934, \$32,372.78. In the year ending June 30, 1935, \$4625.93, and in the year ending June 30, 1936, \$9404.54.

Q. Did you say you had the books of the company back to 1905?

A. I have the ledger which goes back to 1905.

Q. You have the ledger? A. Yes.

Q. Can you state, Mr. Nelson, briefly, whether the books show that between 1925 and 1929 there were no receipts from timber sales?

A. 1925 to 1929?

Q. Yes.

A. On April 23, 1929 I find a receipt of \$10,000 from the Santa Cruz Lumber Company, deposit on a certain agreement dated April 23, 1929. The other receipts in 1929 clearly consist of interest, collection of stockholders' assessments, and some capital stock tax.

Q. That is all between 1925 and 1929?

A. Other than the \$10,000—you understand that is not an audit, that is a review.

Q. Now, let us take the earlier period, take the period 1920 to 1925.

A. Here is a cash item designated "Cal. Timber Special Account, \$698.89."

Q. Is that an isolated sale of timber—would you take that to [30] be that? I do not understand your reference there.

(Testimony of Frank C. Nelson.)

A. I do not understand it, either, but it represents three checks received from some small sales.

Q. That is for what year?

A. That is on January 12, 1920.

Q. Sales of timber?

A. The entry does not recite it.

Q. \$698.89, January 12, 1920, from California Timber Company—it was apparently a small sale?

A. The full description is "January 8, Check Newark Lumber Company, \$37.54," "January 9, San Jose Builders Supply Company, \$250," and "January 12, California Timber Company, \$11.35." Here is another item designated California Timber Special Account \$7.50.

Q. That is in the same year?

A. That is in the same year; a similar item for \$597.73.

Q. Also in 1920?

A. In March, 1920. Here is an item of \$2577.90, representing a loan from the stockholders. Here is another item, Cash, California Timber Company, Special Account, \$1000, described as May 7, Check Newark Lumber Company on account of pickets, 12,000 pickets at \$95 per thousand; a similar item designated California Timber Special \$75; another item June 20, of \$83.09; another item, Loan from stockholders \$872.50; another item, California Timber Company Special \$137.84; another item of \$494.62; another item, California Timber Company, Special on August 20, 1145.96; one on October 20

(Testimony of Frank C. Nelson.)

of \$570.50; one on November 20 of \$147; and loans of \$2617.50. On December 7, 1920, there was an item of \$15,360 from the State of California, which appears to be applied on a charge to the State of California for \$38,400 for the sale of property which is accounted by a journal entry; an item in December, 1920, on the California Timber Company Special Account, \$1192.75, and one of \$40 on January 14, 1921; one of \$400 on February 15, 1921; and \$501.53 in March, 1921. [31] An item of \$988.08 received from H. L. Middleton, Agent, Section 11. Another item, Credit to H. L. Middleton, Agent, Section 11, \$9.08. I would not be sure whether that means Agent or Agreement. It is abbreviated, "Agt.," in both of those last two cases. Another item of Credit H. L. Middleton, Agent or Agreement, Section 11, that is \$113.68. That is described as Check Milpitas Lumber Company on Bank of Milpitas for posts and pickets; cash from the State of California \$3840 June 15, 1921; \$1745 was received on loans on July 31, 1921.

Q. That is to say a stockholders' loan, or does it show?

A. They are all stockholders loans, all described as stockholders' loans. On July 31, 1921 there was another item of \$85.40 on the Middleton item; on September 29, 1921 a receipt of \$5329.40 on stockholders' loan. On October 10, 1921, \$685.70 on a loan from Timothy Hopkins, Stockholder, and on November 25, 1921, \$2719.90, another loan from

(Testimony of Frank C. Nelson.)

stockholders. On November 12, 1921, \$1500 from H. L. Middleton, Agent, Section 11; a similarly designated item on December 1, 1921, of \$137.27. A similar item on January 3, 1922 of \$668.76; two other items similarly designated, \$69.05 and \$189.25. On March 28, 1922, an item of \$39.47 from the State Compensation Insurance Fund. On May 4, 1922 \$32.90 from H. L. Middleton. On July 10, 1922, \$3840 from the State of California. On July 29, 1922, \$1500 option on property from McCutchen, Olney, Willard, Mannon & Greene, described as Check from San Vicente Lumber Company. On September 30, 1922, \$1500 credited to option on property from Mr. Timothy Hopkins check dated September 28, 1922, from San Vicente Lumber Company. A similar designated item of option on property on October 31, 1922, for \$1500, one on December 1, 1922, for \$1500. That is the last entry. That covers the year 1922. [32]

Miss Phillips: Your Honor, plaintiff's complaint referred to the fact that during the years 1923 to 1928, inclusive, refund claims were filed and for the capital stock tax paid to the Government for that period, and they were paid to plaintiff. The only purpose of developing this is to show the company was actually doing business in these years. The witness has carried it through 1920, 1921, and 1922. I think the testimony heretofore shows that in the years 1925 to 1929 there was no stumpage contract.

Q. Can you state from your examination of the books during the years 1923 and 1924 whether there were sales of timber going on?

(Testimony of Frank C. Nelson.)

A. I see a number of items in 1923 of \$1500, option on property, the nature of which I do not know.

Q. You would not construe that to be a timber sale receipt?

A. Well, I really could not say.

Q. There is nothing to indicate that \$1500 was paid for timber sold from the land?

A. The item is described this way, From Mr. Timothy Hopkins, Check to his order from San Vicente Lumber Company, by H. H. Stoddard, dated April 30, on First National Bank of Santa Cruz, ninth payment \$1500. That item was on May 1, 1923, and on May 31, 1923 there was an item similarly described, and it is called the tenth payment.

Q. To shorten it a little bit, do you find any record in the year 1923 or 1924, similar to those you have testified to as having occurred in 1920, 1921, 1922, in 1924 and 1925, relating to timber or stumpage sales?

A. We are talking about the year 1923 and 1924?

Q. And 1925.

A. I could hardly say without going over the records. Do you want me to go through them?

Q. Yes.

A. These items of \$1500 option on property continue [33] through here. \$38.40 on September 1, 1923, from the State of California; \$18.42 on February 1, 1924 from the State Compensation Insurance Department.

(Testimony of Frank C. Nelson.)

Q. I am interested in the sales of timber.

A. \$3840 on July 1, 1924, from the State of California. That carries it to the end of 1924. Could I just take a moment to look up an item, Miss Phillips?

Q. Mr. Nelson, I am going to ask you if you are familiar with the company's balance sheet for the years in question, 1932 to 1936.

A. Well, I would not say I was familiar with them.

Q. You have had something to do with auditing the books, haven't you? A. Only since 1937.

Q. Have you all the books in your possession now? A. Yes.

Q. Now, I am going to ask you if you could make an examination of the books, of the Profit and Loss Statement for the income during the calendar years 1932 to 1936, inclusive, and for the company's balance sheets for the same years, 1932 to 1936, and I will give you a carbon copy of each and ask you if you could make an examination of those with the books during the noon hour, or possibly we might continue this until tomorrow morning and ascertain whether those are correct copies of the income tax returns of profit and loss statements for those years and for the balance sheets for those years, and ascertain if those are correct, so that I can put a copy in evidence as my exhibit. Would it be possible to do that? A. Yes.

Miss Phillips: I will identify the first one as

(Testimony of Frank C. Nelson.)

Exhibit A, that is the Profit and Loss Statements and Exhibit B for identification, a Summary of the Balance Sheets for those years—those are for identification purposes until they are agreed to.

The Court: They may be so marked. [34]

Miss Phillips: Q. You have given us a summary of what the books show for the period of approximately nine years. I would like to have you examine your books and report to us whether it is not true that from time to time during the entire history the plaintiff company has not engaged in similar sales such as those that you have testified to on direct examination, that is, the sale of timber, standing timber, by stumpage contracts. See if the books do not show since its organization the same thing has occurred. A. Since 1906?

Q. Yes.

A. Do you want me to do that now?

Miss Phillips: I think that will be rather extended, your Honor, I think it would take a good deal of the Court's time to do it on the stand.

The Court: Have you anything further with the witness?

Miss Phillips: Not now, but I do want to ask the previous witness a question or two on some other point upon which he has testified.

The Court: Do you want the case to go over until tomorrow morning?

Miss Phillips: That is satisfactory to us.

Mr. Brown: That is satisfactory.

(Testimony of Frank C. Nelson.)

The Court: It may go over until tomorrow morning at ten o'clock.

(The further hearing of the cause was adjourned to tomorrow, Friday, February 7, 1941, at 10:00 o'clock a. m.) [35]

Friday, February 7, 1941—10:00 o'clock a. m.

FRANK C. NELSON

Cross Examination

(resumed)

Miss Phillips: Q. Mr. Nelson, since adjournment you have had an opportunity to go over the books of account of the plaintiff? A. Yes.

Q. Did you prepare the tabulation which is entitled "Statement showing a summary of sales, years 1906 to 1922, inclusive? A. Yes.

Q. You have the original, have you?

A. Yes, I have.

Q. This is taken from the company's books, and is accurate, to the best of your belief?

A. Yes, it is.

Miss Phillips: May I have this marked Defendant's Exhibit C for identification?

The Court: Yes.

Miss Phillips: Q. Mr. Nelson, taking Exhibit A for identification, a summary of profit and loss statements for the calendar years 1932 to 1936, inclusive, would you make any changes in that exhibit according to your examination of the books?

(Testimony of Frank C. Nelson.)

A. There are one or two items which should be explained.

Q. Surely, that is exactly what we want.

A. There is one item designated under income, Tanbark sales, \$1455.52.

Q. That is for the year 1934?

A. Yes. This was received under the contract with the Santa Cruz Lumber Company; in other words, it was received on the same contract as the item above there designated Timber Sales. That is all on that particular schedule. You understand I have not checked every item in detail on here, but I have checked them in totals.

Miss Phillips: Then I will offer that in evidence as Defendant's Exhibit 1. [36]

The Court: It may be marked Defendant's Exhibit 1.

(The documents were marked "Defendant's Exhibit 1.")

[Defendant's Exhibit No. 1 is set out at page 224 of this printed record.]

Miss Phillips: Q. Now, the balance sheets which yesterday I offered for identification as Exhibit B, I think you want to point out some changes that you would like to make in that, do you not?

A. Yes. It should be understood that the item designated "Reserve for Depreciation" under the assets, which starts in with the amount of \$12,219.88, in 1932, and continues the same amount throughout all of the years, is a credit item rather than a debit

(Testimony of Frank C. Nelson.)

item—in other words, the deduction should be shown.

Q. That is the only way you can make that add up to the figures?

A. That is right. The same remark applies to the reserve for depletion, which starts out in 1932 with \$49,317.45.

Q. Will you circle with red those which are a deduction from the total receipts?

A. Not from the total receipts, but deducted from the assets.

Q. May I ask you to take a red pencil and put brackets to show how those figures are in fact treated on that?

A. Yes. Under the liability there is an amount designated “Deposit \$27,749.08.” Apparently there is a transposition of figures, that should be \$27,479.08.

Q. There is a transposition, and it should be \$27,479.08? A. Yes.

Q. Will you make that change in red pencil?

A. Yes. Then the item on there which is designated “Earned surplus”; according to my idea it should be designated “Deficit,” as it is a deficit, clear across there.

Q. That is the same thing? A. Yes.

Q. In order to make that added to the total, that is to be subtracted? A. Yes. [37]

Q. Will you make that change there?

A. Yes.

(Testimony of Frank C. Nelson.)

On May 28, 1926 an option to George L. Hoxie to sell the property for \$2,000,000. That option appears to have been renewed on several occasions. On September 18, 1909 it granted an option to James Jerome to sell the property for \$1,600,000, and on July 3, 1916 it granted an option to W. E. Dean to sell the property for \$1,250,000. Then additionally there was an occasion in 1907, April 29, where it authorizes Charles M. Felton to sell the property for \$1,500,000; that does not appear to be in the way of an option, but just an authorization to sell.

Q. You referred to an option agreement in 1916 to Mr. W. E. Dean. Was he a shareholder of the corporation at that time?

A. I will have to check that. No, he does not appear to have been a stockholder at that time. Pardon me, Mr. Brown. It seems to me that there is an account of Walter E. Dean 1912½ shares, which was closed out October 7, 1910, apparently, by transfer to W. E. Dean, for a portion of those shares, and he remained a stockholder until 1927.

Q. Then according to the records Mr. Dean was a stockholder?

A. Yes, he was a stockholder.

Q. Of how many shares?

A. 1900 shares.

[39]

Q. What was the total outstanding shares of stock?

A. 10,000 shares.

Q. Mr. Nelson, referring to Defendant's Exhibit No. 1, which shows income derived during the calendar years ending December 31, from 1932 to

(Testimony of Frank C. Nelson.)

1936, inclusive, there are items designated as timber sales and tanbark sales. Were all of those receipts derived under the timber contracts with the Santa Cruz Lumber Company?

A. Yes, they were all received under the Santa Cruz Lumber Company contracts.

Mr. Brown: I think that is all from this witness.

Re-cross Examination

Miss Phillips: Q. Mr. Nelson, referring to the option to Mr. Bassett, to which you referred a moment ago, that option was granted again on May 6, 1937, was it not—a board of directors meeting on May 6, 1937? A. May 6, 1937?

Q. An option to Mr. Bassett. You have referred to an option given Mr. Bassett. Now I am asking you was not an option given again to Mr. Bassett in 1937, on May 6th?

A. I do not find where there was any option granted.

Q. Perhaps I can assist you.

Mr. Brown: Miss Phillips, Mr. Wood is informed regarding the granting of that option.

Miss Phillips: That is all right, if another witness can answer it more accurately; I will withdraw the question from the witness. That is all.

PERCY A. WOOD

recalled for further cross-examination.

Miss Phillips: Q. Mr. Wood, the question I asked the preceding witness was—he testified with

(Testimony of Percy A. Wood.)

regard to an option to [40] Mr. Bassett; he testified that an option was given in some early years, and I asked him if it was not true that an option was given Mr. Bassett in May of 1937.

A. There was an option granted to Mr. Bassett in 1937.

Q. Can you read into the record the minute upon that subject? A. Yes.

Q. Then give us your explanation.

A. It is rather lengthy, as a matter of fact. Do you want me to read the whole thing?

Q. The report of the Board of Directors on that subject. I do not believe the entire option need be read.

A. As a matter of fact, Mr. Bassett had made quite an investigation of what is known as the Pescadero side of the property, and he thought he might be able to sell that property, and asked for a 90-day option, so the matter was presented to the Board of Directors and we decided to give him a 90-day option.

Q. Will you read into the record the presentation at the Board of Directors?

A. The President stated that the principal purpose of the meeting was to consider the granting of a 90-day option to Mr. H. F. Bassett, in which the option would outline the terms on which it would be willing to negotiate for the sale of its timber land on the Pescadero watershed, such option to cover also the timber holdings on the same

(Testimony of Percy A. Wood.)

watershed of the Estate of Timothy Hopkins. The President reported that he had employed Mr. Frank Solinsky to advise the company in this matter, and that this employment was approved by the directors present. After discussion, on motion duly made and seconded, the President was authorized, by vote of all directors present, to make and enter into an agreement with H. F. Bassett in the following form.

Q. Then the option quoted a price?

A. Yes. [41]

Q. In your authorization to Mr. Bassett, giving him this option, was it not agreed that there should be no negotiations with the Santa Cruz Lumber Company? A. That is correct.

Q. Because the dealings of your company with the Santa Cruz Lumber Company over a long period of years had been on such a satisfactory basis, that if a sale were made to the Santa Cruz interests no commission would go to Mr. Bassett?

A. That is correct.

Q. That was part of the option? A. Yes.

Q. Mr. Wood, in the division of the property of the company, to which you referred yesterday, was there a portion of the property on which timber was taken off consistently, and another portion on which no timber had ever been taken off?

A. Well, yesterday I referred to the contract with the Santa Cruz Lumber Company on a certain section, and that, as a matter of fact, is isolated

(Testimony of Percy A. Wood.)

from the main body of timber. On the other side, what is known as the Butano and Pescadero side, there has been no timber taken off.

Q. About how would you divide the acreage on that?

A. Well, in round figures I would say practically 12,000 acres.

Q. And the acreage which has been logged or timbered off, that is approximately 1500 to 1600 acres?

A. 1500 or 1600 or 1700 acres, something like that.

Q. Is it contemplated that eventually this 1500 or 1600 acres would be completely deforested?

A. It is completely deforested now.

Q. At what stage would you say the deforestation was completed?

A. That must have been, I would say, under these contract with the Santa Cruz Lumber Company, 1936 and 1937.

Q. So that there is no subsequent contract now outstanding? A. No. [42]

Q. What is being done with this deforested section?

A. Nothing can be done. It is a steep side hill, you could not grow anything on it, I would say it is valueless, probably worth 50 cents an acre, possibly.

Q. Is there any other section or portion of the land which it is contemplated might be sold separately from this main subdivision?

(Testimony of Percy A. Wood.)

A. There is a small section separated from the main body in what is known as Section 24, which adjoins, I would say, to the west, which might be sold separately to the State.

Q. What about Section 11? Wasn't it contemplated in that same year, March, 1937, a sale of that?

A. Section 11 could be sold separately, because it is an isolated tract of land.

Q. Isn't it true that in March, 1937 an authorization was given to you to sell it for a price net to the corporation of \$10,000 or more?

A. That is correct.

Q. That is Section 11?

A. In other words, that was given for the purpose of sale, thinking that San Mateo County might like to buy the property, because it was convenient to them.

Q. You referred to the upkeep of the trails through the property. The man whose business it was to maintain the trails was primarily for fire protection, was he not?

A. Yes, as a matter of fact we had to maintain some trails through the property, because if we had a fire men could be moved to the property to put the fire out. One of the reasons we discontinued Mr. Bennett as a caretaker, etc., is due to the fact that the County of San Mateo has made tremendous improvements in fire-fighting down there, and have built lots of trails of their own.

(Testimony of Percy A. Wood.)

Q. That is no longer necessary? A. No.

Q. Trail maintenance? A. No. [43]

Re-direct Examination

Mr. Brown: Q. Mr. Wood, what methods are available to the company for liquidating this property?

A. I don't know. The board has tried to devise methods and means and ways and given the matter considerable thought, but I don't know how it could be liquidated except either by sale to San Mateo County, or the State of California, or by eventual continuation of these logging contracts, which we do not care to do, if the State and San Mateo County want the property. There is a movement on by Lyman Wilbur, President of Stanford University, and Ex-President Hoover, and other residents of San Mateo County, to acquire this property for park purposes, because it is the only large holding of redwood timber which is left in this territory.

Q. Has the company, itself, made any effort to dispose of the property?

A. In what particular way?

Q. I was interested in the purpose for which these options had been granted. Can you explain why those options have been granted?

A. The options were granted for the purpose of endeavoring to dispose of the property as a whole.

Q. Miss Phillips referred to an option of Section 11. Is this the same Section 11 that you have referred to earlier in your testimony regarding some logging operations?

(Testimony of Percy A. Wood.)

A. Section 11, as a matter of fact, is an isolated section on which there was originally a shingle mill built.

Q. Section 11 has been cut over in part?

A. Only a very small part.

Mr. Brown: Before we conclude I would like to offer in evidence, subject to the same understanding that we had regarding earlier copies of minutes offered, copies of minutes of some of the meetings of the board of directors which deal with transactions concerning which Miss Phillips inquired.

[44]

Miss Phillips: No objection.

Mr. Brown: It is understood that we will enter into a stipulation as to that after you check the accuracy of those records.

Miss Phillips: Yes.

Mr. Brown: That is all. If your Honor please, we would like to submit this case on briefs if this is satisfactory.

The Court: What time do you wish?

Mr. Brown: We would like 20 days.

Miss Phillips: That is all right with me.

The Court: And how much for you, Miss Phillips?

Miss Phillips: 20 days.

Mr. Brown: And ten days to reply?

The Court: Very well, it may be submitted on briefs to be filed 20, 20 and 10.

Miss Phillips: May the record show a motion

for judgment for the defendant upon all of the issues involved? I presume your Honor will want findings of fact and conclusions of law submitted after reaching your decision.

The Court: Yes. [45]

PLAINTIFF'S EXHIBIT No. 1

CERTIFIED COPY OF RESOLUTION.

I, the undersigned, Secretary of Santa Cruz Lumber Company, a corporation organized and existing under and by virtue of the laws of the State of California, do hereby certify that at a meeting of the Board of Directors of said corporation duly and regularly called and held at the office and principal place of business of the said corporation on March 4th, 1930, at which meeting a majority and quorum of the said directors were present and acting, the said Board of Directors did, by the unanimous vote of all directors present, duly and regularly pass and adopt the following resolution:

Resolved by the Board of Directors of Santa Cruz Lumber Company, that George N. Ley and Jas. M. Maddock, president and secretary respectively of said corporation, be and they hereby are authorized and directed to execute for and on behalf of said corporation as such officers thereof, that certain agreement presented to said Board of Directors on this date, wherein Western Shore Lumber Company, a corporation, is first party and said

Plaintiff's Exhibit No. 1 (Continued)

Santa Cruz Lumber Company, a corporation, is second party, for the purchase of certain redwood and pine timber and tan bark oak upon the terms and conditions specified in said contract or upon such modified terms and conditions as to said president and secretary shall be acceptable and said president and secretary are hereby expressly authorized and empowered to modify the terms and conditions of said contract to such extent as in their judgment may seem proper before executing the said contract for and on behalf of said Santa Cruz Lumber Company.

I further certify that said resolution has never been amended, revoked or set aside and is now in full force and effect.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said corporation this 5th day of March, 1930.

[Seal]

JAS. M. MADDOCK

Secretary of Santa Cruz
Lumber Company.

This agreement, made and entered into this 10th day of March, 1930, by and between Western Shore Lumber Company, a corporation organized and existing under and by virtue of the laws of the State of California, first party, and Santa Cruz Lumber Company, a corporation organized and existing under and by virtue of the laws of the State of California, second party,

Plaintiff's Exhibit No. 1 (Continued)

Witnesseth:

That, whereas, first party is the owner of the following described timber lands, to-wit:

All those certain lots, pieces or parcels of land situate, lying and being in the County of San Mateo, State of California, and more particularly described as follows, to-wit:

All of Section Twenty One (21); all of Section Sixteen (16); and the West half ($W\frac{1}{2}$) of the Northwest quarter ($NW\frac{1}{4}$) of Section Fifteen (15); all in Township Eight (8) South, Range Three (3) West, Mount Diablo Base & Meridian;

and

Whereas, second party desires to acquire the right to cut, fell and remove the redwood and pine timber and the tanbark on said timber lands as hereinafter provided;

Now, therefore, in consideration of the premises and of the sum of forty thousand (40,000) dollars in cash to first party in hand paid by second party concurrently with the execution of these presents the parties hereto hereby mutually agree as follows:

(1) (a) As long as second party shall make the payments and keep and perform the agreements, covenants, terms and conditions herein contained on its part to be kept and performed, the second party shall have and is hereby granted during the term hereinafter provided the right to cut, fell and remove from the said Section Twenty One

Plaintiff's Exhibit No. 1 (Continued)

(21) all the merchantable redwood and pine timber and tanbark oak (hereinafter referred to as tanbark) growing, standing or being thereon, for the prices hereinafter provided; and for the purpose of cutting, felling and removing said timber and tanbark, second party shall have possession of said Section Twenty One (21) for the term hereinafter provided and shall have the right during such term to cut out and construct roads over and across the same; but all such rights, roads and rights of way therefor shall automatically terminate upon the expiration or sooner termination of the right of second party hereunder to cut and fell and log timber thereon. The second party shall also have and there is hereby granted to it a right of way for one railroad aver and across Sections Sixteen (16) and Twenty One (21) and such parts of Sections Fifteen (15) and Twenty Two (22) as belong to first party, said Township and Range, for use in lumbering under this agreement, and also for use in lumbering by the second party upon Section Twenty Eight (28), said Township and Range, or any other timber or timber lands in the general neighborhood it may now own or hereafter acquire, with the right to relocate said railroad from time to time in part or in whole, and to remove the ties and rails placed thereon. Said right of way and right of removal, so far as necessary or useful in lumbering under this agreement, shall expire and terminate one (1) year after the expiration or sooner ter-

Plaintiff's Exhibit No. 1 (Continued)

mination of the time herein provided for the lumbering operations in which said railroad is used, but as to so much of said railroad as is or may be used in lumbering upon said Section Twenty Eight (28), or other lands or timber of the second party, the right of way herein granted therefor and the right of removal of ties and rails shall continue in full force for ten (10) years from the date hereof, and shall then automatically expire, and no previous expiration or termination of this agreement shall have the effect of terminating such last mentioned right of way before the end of said ten (10) year period. All ties and rails left upon any such right of way after the termination of such right of way and right of removal shall belong to the first party.

(b) If second party shall duly and regularly make all payments and keep and perform all agreements, covenants, terms and conditions herein contained on its part to be kept and performed, during the period of time herein allowed to complete the cutting of all such timber and tanbark on said Section Twenty One (21), and if at the time such cutting is completed, first party is satisfied in its sole discretion with the character, method and manner in which such cutting was done, and is in its sole discretion satisfied with the condition in which said Section Twenty One (21) is then left, then second party shall have and is hereby granted the same right to cut, fell and remove merchantable redwood

Plaintiff's Exhibit No. 1 (Continued)

and pine timber and tanbark from said Section Sixteen (16) and the West half ($W\frac{1}{2}$) of the Northwest quarter ($NW\frac{1}{4}$) of said Section Fifteen (15) as is hereinabove granted to it in respect to such timber and tanbark on said Section Twenty One (21). All the provisions of this agreement hereinafter set forth shall apply to all operations of second party, whether upon or connected with timber cut from said Section Twenty One (21), or upon or connected with timber cut from said Section Sixteen (16) and/or said portion of said Section Fifteen (15), unless herein otherwise expressly provided; but it is expressly understood and agreed that unless first party is satisfied in its discretion as aforesaid, then notwithstanding second party shall not be in default hereunder at the time, it shall have no right to cut, fell or remove timber from said Section Sixteen (16) or said portion of said Section Fifteen (15), or any rights in or to the said timber lands or the timber or tanbark thereon whatsoever.

(2) The price or prices payable by second party to the first party for the said rights to cut, fell and remove said timber and tanbark shall be the following:

(a) An amount based upon the timber and tanbark cut, felled and/or removed by second party at the rate of four (4.00) dollars per thousand feet, board measure, in the case of redwood and pine timber, and at the rate of five (5.00) dollars per

Plaintiff's Exhibit No. 1 (Continued)

cord in the case of tanbark, payable monthly to the first party at its office in San Francisco on the fifteenth day of each and every month for all pine and redwood lumber sawed at the mill of second party and for all tanbark felled and delivered to a tannery by the second party during the preceding calendar month.

(b) If at the expiration of the time herein allowed to complete cutting timber and tan bark upon said Section Twenty One (21), the second party shall have completed such cutting, and shall have at all times made all payments and in all other respects kept and performed all agreements, covenants, terms and conditions herein contained on its part to be kept or performed, but the first party shall not in its discretion be satisfied as provided in paragraph (1) (b) hereof, so that the second party is not permitted to cut timber or tanbark upon said Section Sixteen (16) or said portion of said Section Fifteen (15), then the first party shall thereupon pay to the second party the sum of forty thousand (40,000) dollars, and thereupon this agreement and all rights and obligations of the parties hereunder shall terminate and be at an end.

(c) If the second party shall be permitted under this agreement the right to cut timber and tanbark upon said Section Sixteen (16) and said portion of said Section Fifteen (15) as provided in paragraph (1) (b) of this agreement, then and in such event, if the second party shall during the entire remain-

Plaintiff's Exhibit No. 1 (Continued)

ing term of this agreement make all payments and keep and perform all agreements, covenants, terms and conditions herein contained on its part to be kept and performed, the first party shall allow to the second party a credit of forty thousand (40,000) dollars upon the last forty thousand (40,000) dollars becoming payable hereunder to the first party, as determined by estimate of the remaining uncut timber and tanbark to be agreed upon between the parties hereto one year before the completion of the entire cut; or if the parties hereto are unable then to agree, to be fixed and determined by the decision of a competent timber man or cruiser to be selected by them; but until such estimate is so made, the second party shall be required to continue monthly payments hereunder. In the event that at the time such estimate is so made the remaining uncut timber and tanbark shall be insufficient in value to equal said credit of \$40,000 at the rates to be paid for said timber and tanbark as hereinbefore specified, the amount of such deficiency in value shall thereupon be paid by first party to the second party.

(3) The determination of the number of thousand feet, board measure, of redwood and pine timber cut, felled and removed by the second party shall be made by a tally at the tail end of the mill of second party. If first party shall so elect, said tally shall be made by a tallyman mutually agreed upon by the parties, or appointed by the first party, and the expense of the employment of such tally-

Plaintiff's Exhibit No. 1 (Continued)

man for the purpose of the tally shall be divided equally between the parties. The determination of the amount of tanbark cut by second party shall be made by scale weights of tanbark determined at the tannery to which such tanbark is sent, and if first party shall so elect, shall be made by a person agreed upon between the parties or appointed by first party, and the expense of the employment of such person for such purpose shall be borne equally by the parties.

(4) First party shall have the right at any time through its officers, agents or representatives to inspect the operations of the second party on the said timber lands and the method of tallying hereinabove provided for. First party shall also have the right at any time through its officers, agents or representatives to examine the books of account of second party and all other records of second party covering the operations of said second party on the said timber lands of first party.

(5) The second party shall from and after the date of this agreement proceed diligently with the cutting, felling and removing of said timber and tanbark from the said Section Twenty One (21) and shall saw such timber into lumber at its saw-mill in Section Twenty Seven (27), Township Eight (8) South, Range Three (3) West, and shall within four (4) years from the date of this agreement cut, fell and remove from said Section Twenty One (21) all merchantable redwood and pine tim-

Plaintiff's Exhibit No. 1 (Continued)

ber and all tanbark thereon, and within said period saw into lumber all such timber and deliver to a tannery or tanneries all such tanbark. Unless this agreement shall be theretofore or then terminated either in pursuance of the right of first party as provided in paragraph (1) (b) hereof if it be not satisfied in its discretion, or by reason of default hereunder of the second party, the second party shall and it hereby agrees that it will, upon completing the said cutting upon said Section Twenty One (21), but not prior thereto, begin and thereafter diligently proceed with the cutting, felling and removing of said timber and tanbark from said Section Sixteen (16) and said portion of said Section Fifteen (15), and shall within eight (8) years from the date of this agreement cut, fell and remove from said last mentioned timber lands all merchantable redwood and pine timber and all tanbark thereon, and saw into lumber all such timber and deliver to a tannery or tanneries all such tanbark, it being expressly understood that if permitted so to do by the first party, the second party shall be obliged hereunder, and agrees, to cut, fell and remove all such timber and tanbark and to saw all such timber into lumber and deliver to a tannery or tanneries all such tanbark as aforesaid. Upon the expiration of the said eight (8) years from the date hereof, all further rights of said second party in and to said timber and tanbark on the lands of the first party, and all rights of the second party

Plaintiff's Exhibit No. 1 (Continued)

in and to said lands, other than the railroad right of way hereinbefore granted, shall cease and determine, and the first party shall have the exclusive right and possession of same and of any timber or tanbark remaining thereon.

(6) The legal title to all timber and tanbark upon the lands of the first party, covered by this agreement, shall remain in first party until the same be cut, felled and removed by second party and after such cutting, felling and removal, the legal title to and the right of possession of the same and of any lumber manufactured therefrom shall be and remain in the first party as security for any portion of the purchase price hereinabove provided which may then remain due and unpaid until the same shall have been fully paid; and second party agrees at all times to keep on hand a sufficient quantity of said timber, tanbark and lumber separately piled to secure the balance owing, if any, to first party; and in case of default by second party in making any of the payments hereunder and in performing any of the conditions hereof, first party shall, in addition to other rights in such case provided, have the right to take immediate possession of said timber, tanbark and lumber, and to sell and dispose of same at public or private sale, without notice to the second party, for the purpose of satisfying the balance due under this contract and all costs and expenses in taking, keeping and disposing of said property. So long as the second party shall not be

Plaintiff's Exhibit No. 1 (Continued)

in default hereunder and shall be entitled to proceed with the cutting of timber hereunder, it shall have the privilege of piling at its own risk upon the flat on Section 22, said Township and Range, belonging to the first party and adjoining the mill of the second party on Section 27, said Township and Range, the lumber of the first party cut and sawed under this agreement.

(7) Second party agrees to so conduct its operations upon said lands above described in accordance with good current timbering practice in use in similar redwood lumbering in California, and so as not to damage unnecessarily any young growth or trees left standing by second party, and not to damage in any way any buildings or improvements on said lands.

(8) All slash and cuttings resulting from operations of second party on the lands herein described may be sold by first party for fuel, or other purposes, if first party so elects, but if first party does not so elect, second party agrees to burn the same during the proper season when no danger of forest fire will result. The second party agrees that it will construct good and sufficient firebreaks and fire trails to prevent spreading of fire from the lands of the first party upon which the second party is operating to other timber lands of the first party, and in particular to prevent the spreading of fire from said Section Twenty One (21) to said Section Sixteen (16).

Plaintiff's Exhibit No. 1 (Continued)

(9) Second party agrees to indemnify and to save and hold first party harmless of and from any and all liens and claims whatsoever arising from its operations on said lands of first party. Second party further agrees that first party shall not be liable or responsible for any accidents, loss, injury, or damage happening, or accruing, in connection with, or anywise arising out of the work herein referred to, or any of the operations of second party hereunder to persons and/or property (whether employed upon or utilized in said work, or otherwise, and including the death of any persons) and second party agrees to fully indemnify and save and hold first party harmless of, from and against the same and any and all liability, expenses (including attorneys' fees) payments, claims and/or liens whatsoever therefor.

(10) During the term of this agreement second party agrees to do all in its power to prevent and suppress fires on the lands hereinabove described and in the vicinity and to require its employees to do likewise. In the event that any fire shall start on the lands above described, or in its vicinity, second party agrees to place all its employees in that logging area at work in fighting such fire and to keep them constantly and continuously at work fighting such fire until it shall be extinguished.

(11) No assignment of this agreement shall be made by second party either voluntarily or by operation of law, proceedings in bankruptcy, or otherwise, without the written consent of the first party

Plaintiff's Exhibit No. 1 (Continued)

and any such attempted assignment without such written consent shall be null and void.

(12) In the event that second party shall make default in the payment of any amount due under this contract, as hereinabove provided, or in the performance or observance of the terms, conditions and agreement herein contained on its part to be performed or observed, first party may at its option, upon fifteen (15) days written notice of such default to second party, treat this agreement as terminated without further notice given to second party if within said fifteen (15) days such default be not cured, and thereupon this agreement shall become null and void, and the rights of second party shall come to an end, and second party shall have no further right, title and interest, claim or demand whatsoever, under or by virtue of this agreement in or to the timber lands hereinabove described, or the timber or tanbark thereon, or in or to said sum of forty thousand (40,000) dollars paid concurrently herewith, it being expressly understood and agreed that the said sum is paid to and received by the first party concurrently with the execution of this agreement as and for an essential part of the consideration running to the first party for entering into this agreement, and is made as a payment to the first party for the rights herein granted to the second party, and not as a security. Nothing herein contained shall be construed as depriving first party of any right to any other right or remedy to which it may be

Plaintiff's Exhibit No. 1 (Continued)
entitled at law or in equity on the happening of
such default.

(13) Time is hererby agreed to be of the essence
of this agreement and of all of its provisions.

(14) Any notice which it is herein provided may
or shall be given by either party to the other shall
be deemed to have been duly given when deposited
in the United States mail in San Francisco or Santa
Cruz, California, postage prepaid and registered,
addressed to the party to whom such notice is given
at the following respective addresses:

To the first party at:

905 Kohl Building
San Francisco, California

To the second party at

84 River St.,
Santa Cruz, California

Either party by notice given as hereinbefore pro-
vided may change the address to which notices to it
shall thereafter be addressd.

(15) Subject to the provisions of paragraph
(11) above, this agreement shall bind and shall inure
to the benefit of the successors and assigns of the
respective parties hereto.

In Witness Whereof the parties have
caused their respective corporate names to be here-
unto subscribed and their respective seals to be here-
unto affixed by their respective officers thereunto

Plaintiff's Exhibit No. 1 (Continued)
duly authorized, all in duplicate, the day and year
first above written.

[Corporate Seal]

WESTERN SHORE LUMBER COMPANY
TIMOTHY HOPKINS,

Pres.

By WALTER L. DEAN,

Sect'y.

[Corporate Seal]

SANTA CRUZ LUMBER COMPANY
By GEORGE W. LEY,

President

By JAS. M. MADDOCK,

Sect'y.

State of California,
County of Santa Cruz, ss.

On this 11th day of March in the year one thousand nine hundred and thirty, before me, Esther Spangenberg, a Notary Public in and for the County of Santa Cruz, State of California, residing therein, duly commissioned and sworn, personally appeared George N. Ley and Jas. M. Maddock known to me to be the President and the Secretary respectively of the corporation described in and that executed the within instrument, and also known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed by official seal at my office in the County of Santa Cruz, the day and year in this certificate first above written.

[Seal] ESTHER SPANGENBERG

Notary Public in and for the County of Santa Cruz, State of California.

[Endorsed]: Filed Feb. 6, 1941.

PLAINTIFF'S EXHIBIT NO. 2

CERTIFIED COPY OF RESOLUTION

I, the undersigned, Secretary of Santa Cruz Lumber Company, a corporation organized and existing under and by virtue of the laws of the State of California, do hereby certify that at a meeting of the Board of Directors of said corporation duly and regularly called and held at the office and principal place of business of the said corporation on January 17th., 1936, at which meeting a majority and quorum of the said directors were present and acting, the said Board of Directors did, by the unanimous vote of all directors present, duly and regularly pass and adopt the following resolution:

Resolved by the Board of Directors of the Santa Cruz Lumber Company, that George N. Ley and Jas. M. Maddock, president and secretary respectively of said corporation, be and they hereby are authorized and directed to execute for and on behalf of said corporation as such officers thereof, that cer-

tain agreement presented to said Board of Directors on this date, wherein Western Shore Lumber Company, a corporation, is first party and said Santa Cruz Lumber Company, a corporation, is second party, for the purchase of certain redwood and pine timber upon the terms and conditions specified in said contract or upon such modified terms and conditions as to said president and secretary shall be acceptable and said president and secretary are hereby expressly authorized and empowered to modify the terms and conditions of said contract to such extent as in their judgment may seem proper before executing the said contract for and on behalf of said Santa Cruz Lumber Company.

I Further Certify that said resolution has never been amended, revoked or set aside and is now in full force and effect.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of said corporation this 17th day of January, 1936.

JAS. M. MADDOCK,

Secretary of Santa Cruz
Lumber Company.

This Supplemental Agreement made and entered into this 17th day of January, 1936, by and between Western Shore Lumber Company, a corporation organized and existing under and by virtue of the laws of the State of California, first party, and Santa Cruz Lumber Company, a like corporation, second party,

Witnesseth:

That Whereas, first party and second party made and entered into an agreement, dated March 10, 1930, under which second party was granted the right, for the considerations and upon the terms and conditions therein provided, to cut, fell and remove certain timber on said lands therein particularly described; and

Whereas, the said agreement is still in effect between the parties hereto; and

Whereas, first party is the owner of the following described timber lands in addition to those described in the said agreement of March 10, 1930:

All those certain lots, pieces or parcels of land situate, lying and being in the County of San Mateo, State of California, and more particularly described as follows, to wit:

The East Half and the East Half of the West Half of Section 22, Township 8 South, Range 3 West;

and

Whereas, the parties hereto desire to amend the said agreement of March 10, 1930, to include the lands hereinabove described thereunder and provide for the particular price to be paid for timber growing on said lands;

Now, Therefore, in consideration of the premises and of the mutual agreements herein contained, the parties hereby agree that said agreement of March

10, 1930, be and it is hereby amended as follows:

1. The lands described in the said agreement shall include, in addition to those therein particularly described, the parcels of land hereinabove in this supplemental agreement particularly described, and second party shall have the right to cut, fell and remove the redwood and pine timber on the lands in this supplemental agreement particularly described upon the same terms, conditions and provisions applicable to the lands therein particularly described except as herein amended.

2. The lands in this supplemental agreement particularly described shall be treated as in the same class as Section 16 and the portions of Section 15, in Township 8 South, Range 3 West, Mount Diablo Base and Meridian, described in said agreement of March 10, 1930, and all provisions of said agreement applicable to said Section 16 and portions of said Section 15 shall apply to the portions of said Section 22 described in this supplemental agreement.

3. The price payable by second party to first party for the timber cut, felled and/or removed by second party from any portion of said Section 22 described in this supplemental agreement shall, however, be Two Dollars (\$2.00) per thousand feet, board measure instead of Four Dollars (\$4.00) per thousand feet, board measure, as provided in Section 2, subdivision (a), of said agreement of March 10, 1930, but all other provisions of said section and subdivision shall apply unchanged to the said portions of said Section 22. The said price of Four Dollars

(\$4.00) per thousand feet, board measure shall still apply to all timber cut, felled and/or removed from any other lands under said agreement of March 10, 1930.

4. Except as herein expressly amended, the said agreement of March 10, 1930, shall remain in full force and effect between the parties hereto.

In Witness Whereof, the parties have caused their respective corporate names to be hereunto subscribed and their respective seals to be hereunto affixed by their respective officers thereunto duly authorized, all in duplicate, the day and year first above written.

[Corporate Seal]

WESTERN SHORE LUMBER COMPANY

By A. CRAWFORD GREENE

Vice President

By MYRA LANE

Secretary

[Corporate Seal]

SANTA CRUZ LUMBER COMPANY

By GEORGE M. LEY

President

By JAS. M. MADDOCK

Secty.

[Endorsed]: Filed Feb. 6, 1941.

PLAINTIFF'S EXHIBIT No. 3

Minutes of Meeting of Board of Directors
San Francisco, April 23, 1910.

Written notices having been forwarded to each member of the board, there were present Messrs. Hopkins, Dean, Felton, Thorne and Middleton.

President Hopkins in the chair.

The Minutes of the last meeting of the board were then read, and on motion duly seconded, they were approved as recorded.

On motion of Mr. Dean, seconded by Dr. Thorne,
It was Resolved

That the office of this Company be, and it is hereby removed from No. 516 Kohl Building, San Francisco, to Room 905 in the same building.

Mr. Middleton of the Committee to whom had been referred the matter of the Claim of this Company against Hubbard and Carmichael, reported that up to the present time, there had not been a satisfactory adjustment of the claim.

The President then stated that for the purpose of meeting the present obligations of the company, paying the second installment of taxes, now due, and meeting the current expenses in the near future, some action should be taken to provide the necessary funds. He stated that it had been suggested that it would be advisable to sell from some selected section of the Company's property, the tan bark, oak wood, pickets and other products, rather than to Assess the Stockholders,

Plaintiff's Exhibit No. 3—Continued

Whereupon, On motion of Mr. Felton seconded by Mr. Dean,

It was Resolved:

That Mr. H. L. Middleton be appointed a committee of one, to look into the matter and ascertain which section of Land would be advisable to have cash off; what would be the probable cost of the work to be done, and the value of the tan bark, wood, etc., when it should be marketed;—and to report at a future meeting of the Board of Directors to be called by the President.

There being no further business, On motion the meeting adjourned.

D. C. BATES,
Secretary.

Minutes of Meeting of Board of Directors
San Francisco, May 5, 1910

Written notices having been forwarded to each member of the Board, there were present Messrs. Hopkins, Dean, Felton, Thorne and Middleton.

President Hopkins in the chair.

On motion of Mr. Felton, the reading of the minutes of the last meeting was postponed.

Mr. Middleton presented his report in relation to the taking off Tan Bark, Shakes, etc., from some portion of the Company's property.

The Report is hereunto attached and made a part of this record.

Plaintiff's Exhibit No. 3—Continued

Letterhead of
Santa Clara Valley Mill & Lumber Company
H. L. Middleton, Manager

San Francisco, California
May 4th, 1910.

Mr. Timothy Hopkins,
President Western Shore Lumber Co.,
San Francisco, Cal.

Dear Sir:

Have had estimate made for getting out tan bark from lands of Western Shore Lumber Company in San Mateo County.

From 300 to 600 cords to come from Section 2 and 35 T 7 & 8 on Pescadero and 600 to 1000 cords to come from the Butano section 19 T. 8 S. R. 3 W. The net freight on the bark will be from \$9.00 to \$10.00 per cord.

Bloomquist Bros. of Pescadero have offered to peel, pack and deliver by team from the Pescadero to Beegers Tannery at Redwood City for \$12.00 per cord and Beegers Tannery offer us \$22.65 per cord, this would leave a net profit of \$10.65 per cord. Will try to get a lower figure on delivery of bark.

On bark to come from Section 19 on the Butano estimates show a net profit of from \$9.00 to \$10.00 per cord, we still have men looking over the land and may expect bids by May 9th.

The present freight rate on bark to San Francisco is \$2.90 a cord, have put in an application to S. P. Co. to reduce this rate to \$2.00 per cord.

Plaintiff's Exhibit No. 3—Continued

I would suggest that we take off same lands from which we take the bark 500,000 to 1,000,000 shakes. The shakes will pay a profit of not less than \$10.00 per M Ft board measure. In making the shakes it is advisable to work portions of the tree that will not make shakes into pickets, posts and grape stakes.

Will have a further report in a week or ten days.

Yours truly,

[Signed] H. L. MIDDLETON.

On motion of Mr. Felton, seconded by Mr. Dean,

It was Resolved,

That the Report be accepted, and that Messrs. Hopkins and Middleton be appointed a Committee, to take the necessary steps to carry out the plan as presented in the Report.

It being stated by Mr. Middleton that such money as would be required to carry on the proposed work could be borrowed by this company from Banks in San Jose and Santa Clara, at interest of six per cent per annum.

On motion of Mr. Dean seconded by Dr. Thorne,
It was Resolved,

That the President and Secretary of this company are hereby authorized to sign and deliver the promissory notes of the Company, from time to time, in such amounts as may be required, not exceeding in all the sum of twenty five thousand Dollars, to bear interest at six per cent.

Plaintiff's Exhibit No. 3—Continued

The Committee to whom had been referred the matter of the claim against Hubbard and Carmichael reported progress and were granted further time.

There being no further business, on motion the meeting adjourned.

D. C. BATES

Secretary

Minutes of Meeting of Board of Directors

San Francisco, May 24, 1916.

Written notice having been forwarded to each of the surviving members of the Board,

There were present:

Messrs. Timothy Hopkins, W. E. Dean and H. L. Middleton.

Absent: Mr. Charles N. Felton Jr.

President Hopkins in the Chair.

The minutes of the last meeting were read, and on motion, approved as recorded.

There being a vacancy in the Board of Directors caused by the death of our esteemed associate, Hon. Charles N. Felton, it was moved and carried that Mr. Walter L. Dean be elected to fill the vacancy so caused.

Mr. Walter L. Dean being present took his seat in the Board.

The President then stated that the purpose of the meeting was to consider the clearing of the Company's Section 11, Township 8 South Range 3 West

Plaintiff's Exhibit No. 3—Continued
M.D.B. and M. of the timber, tanbark, etc.

Whereupon, On Motion duly Seconded, it was Resolved:

That Mr. H. L. Middleton be and he is hereby authorized and empowered to take the necessary steps toward that end, and to the marketing the product from said Section 11 for and in the behalf and interest of this Company.

There being no further business the meeting adjourned.

D. C. BATES
Secretary

Special Meeting of the Board of Directors
San Francisco, August 23, 1920.
11 o'clock A. M.

Special meeting of the Board of Directors, called by order of the President was held at the office of the Company.

There were present:

Messrs. Timothy Hopkins, W. E. Dean, H. L. Middleton and Walter L. Dean.

President Hopkins in the chair.

On Motion duly Seconded, the reading of the Minutes of the last Meeting was dispensed with.

On Motion of Mr. W. E. Dean, Seconded by Mr. H. I. Middleton, Mrs. D. C. Bates was duly elected a Member of the Board of Directors, to fill the vacancy caused by the decease of Mr. C. N. Felton, and Mr. Bates being present immediately took his seat as Member of the Board of Directors.

Plaintiff's Exhibit No. 3—Continued

President Hopkins stated that the business to come before the Meeting was a proposition to sell certain real property to California Redwood Park Commission of the State of California.

Director Mr. W. E. Dean then offered the following Resolution:

“Resolved, That this corporation enter into an agreement to sell to California Redwood Park Commission of the State of California that certain real property situate in the County of Santa Cruz, State of California, particularly described as follows:

“The east one-half ($E\frac{1}{2}$) of section thirty-one (31) and the southwest one-quarter ($SW\frac{1}{4}$) of section twenty-nine (29), all in township eight (8) south of range three (3) west, Mount Diablo Base and Meridian, for the total price of thirty-eight thousand four hundred (38,400) dollars in lawful money of the United States, upon the terms and conditions contained in the agreement hereinafter in this resolution set forth.

Resolved Further, That this corporation execute and deliver to said California Redwood Park Commission of the State of California an agreement for the sale of said real property, which said agreement is in the words and figures following:

This Indenture, made this 23rd day of August, A. D., 1920, by and between California Redwood

Plaintiff's Exhibit No. 3—Continued

Park Commission of the State of California, as party of the first part, and Western Shore Lumber Company, a corporation, as party of the second part,

Witnesseth:

That the said party of the first part, pursuant to the authority conferred upon it by the provisions of that certain act of the legislature of the State of California, entitled "An Act providing for the enlargement of the California redwood park, making an appropriation for the purchase of additional land therefor, and granting power to the California redwood park commission to purchase the same," approved May 28, 1917, has agreed and does hereby agree to the purchase of and from the said party of the second part, and the said party of the second part has agreed and does hereby agree to sell unto the said party of the first part, all that certain real property situate, lying and being in the county of Santa Cruz, State of California, and particularly described as follows, to-wit:

The East one-half (E.1/2) of Section thirty-one (31), and

The Southwest one-quarter (S.W.1/4) of Section twenty-nine (29), all in Township Eight (8) South of Range Three (3) West, M.D.B.&M., upon the terms and conditions following, to-wit:

1. The agreed purchase price of the above described real property is the sum of thirty-eight thousand four hundred (38,400) dollars, lawful

Plaintiff's Exhibit No. 3—Continued

money of the United States, of which the sum of eleven thousand five hundred and twenty (11,520) dollars shall be payable to said second party immediately upon the due execution and delivery to said first party by said second party of a good and sufficient deed conveying to the State of California the fee simple title to said real property and the whole thereof. The residue of said purchase price shall be paid in seven equal annual installments of three thousand eight hundred and forty (3,840) dollars each, falling due on the first day of July, A. D., 1920, and upon each succeeding anniversary thereof until the whole of said agreed purchase price shall be fully paid, all such payments to be made from the amount appropriated for such purpose by the provisions of the above entitled act. Such deferred payments shall draw no interest. And, in this behalf, said first party hereby agrees that, upon the delivery and acceptance of such deed, it will, in writing, authorize and request the Controller of the State of California annually to draw and deliver his warrants against said fund, upon the first days of July, A. D., 1920, 1921, 1922, 1923, 1924, 1925 and 1926 for the said sum of three thousand eight hundred and forty (3,840) dollars each, made payable to said second party, its successors in interest and assigns.

II. Said second party agrees that it will, without unnecessary delay, deliver to the Attorney General of the State of California suitable abstracts

Plaintiff's Exhibit No. 3—Continued
 of title showing that it has a good and valid title
 to the above described real property, and the whole
 thereof, free from any valid liens or encumbrances.
 The cost of any proceedings which may be found
 necessary to remove any minor defects or clouds
 affecting such title shall be borne by said second
 party. Upon the initial payment of such purchase
 price being made as above provided, such abstracts
 shall become the property of the State of California.

In Witness Whereof, the said parties hereto have
 caused these presents to be executed, in duplicate,
 by their respective officers, thereunto duly author-
 ized, the day and year hereinabove first written.

CALIFORNIA REDWOOD
 PARK COMMISSION

By
 President

Attest: Secretary

WESTERN SHORE LUMBER
 COMPANY, a corporation,

By
 President

Attest: Secretary

The foregoing agreement is hereby approved, this
 day of, 1920.

 Members of State Board
 of Control.

Plaintiff's Exhibit No. 3—Continued

The foregoing agreement is hereby approved as
to form this day of, 1920.

.....

Attorney General of the State
of California.

Whereas, under and by virtue of the provisions of that certain act of the legislature of the State of California, entitled "An Act providing for the enlargement of the California redwood park, making an appropriation for the purchase of additional land therefor, and granting power to the California redwood park commission to purchase the same, approved May 28, 1917, California Redwood Park Commission was and is empowered and authorized to purchase land contiguous to California redwood park and suitable for the enlargement thereof; and

Whereas, pursuant to such power and authority and to the provisions of said act, California Redwood Park Commission has heretofore purchased of and from Western Shore Lumber Company, a corporation, certain lands contiguous to said park, as the same existed at the date of said act, suitable for the enlargement thereof, situate, lying and being in the county of Santa Cruz, State of California, and particularly described as follows, to-wit:

The East one-half (E.1/2) of Section thirty-one (31), and

The Southwest one-quarter (S.W.1/4) of section twenty-nine (29), all in Township Eight (8) South of Range Three (3) West, M.D.B.&M.; and

Plaintiff's Exhibit No. 3—Continued

Whereas, the agreed purchase price of said lands was and is the sum of thirty-eight thousand four hundred (38,400) dollars, of which the sum of eleven thousand five hundred and twenty (11,520) dollars was heretofore paid to said vendor upon the delivery by it of a good and sufficient deed conveying to the State of California the fee simple title to the above described real property and the whole thereof; and

Whereas, there remains unpaid of said purchase price the aggregate sum of twenty-six thousand eight hundred and eighty (26,880) dollars, which shall become payable to said vendor in seven equal annual installments of three thousand eight hundred and forty (3,840) dollars each, falling due on the first day of July, 1920, and upon each succeeding anniversary thereof until the unpaid residue of said purchase price be fully paid and discharged:

Now, Therefore, in consideration of the premises,

Be It Resolved: That California Redwood Park Commission Hereby assigns, transfers and sets over unto said Western Shore Lumber Company, its successors in interest and assigns, the said sum of twenty-six thousand eight hundred and eighty (26,880) dollars out of the total amount appropriated by said statute; and

Be It Further Resolved: That the Controller of the State of California, be, and he hereby is, authorized and requested annually to draw and deliver his warrants against the sum so appropriated upon the

Plaintiff's Exhibit No. 3—Continued

first days of July, A. D., 1920, 1921, 1922, 1923, 1924, 1925, and 1926, for the said sum of three thousand eight hundred and forty (3,840) dollars each, made payable to said Western Shore Lumber Company, its successors in interest and assigns; and

Be It Further Resolved: That the Secretary of this Commission be and he is authorized and directed to deliver to said Western Shore Lumber Company an original signed duplicate of the foregoing preambles and resolutions, and to deliver certified copies thereof to the State Controller, to the State Treasurer and to the State Board of Control.

I, -----, hereby certify that I am, and at all times herein mentioned have been, the Secretary of California Redwood Commission of the State of California; that the foregoing is a full, true and correct copy of a resolution adopted at a meeting of said Commission, held at Sacramento, California, on the ----- day of -----, 1920; that said meeting was regularly called and held pursuant to law, and all of the Commissioners were present at said meeting; and that said resolution was duly passed and adopted, has never been revoked, annulled or set aside, and is still in full force and effect.

I further certify that at the date of the adoption of said resolution, and at the date of the execution of said agreement, -----, was and is the President of said Commission.

Plaintiff's Exhibit No. 3—Continued

In Witness Whereof, I have hereunto set my hand this ----- day of -----, 1920.

Secretary of California
Redwood Park Commission.

Resolved Further, That the president or vice-president and the secretary of this corporation be and they hereby are, authorized, in the name of and on behalf of this corporation, and under its corporate seal, and as its act and deed, to make, execute and deliver said hereinbefore recited agreement to California Redwood Park Commission of the State of California."

Upon motion duly made and seconded, said resolution was unanimously adopted, each director present voting in favor thereof.

Thereupon, Director W. E. Dean offered the following resolution:

"Whereas, California Redwood Park Commission of the State of California has offered to buy of and from this corporation the property described in the following resolution, for the total price of thirty-eight thousand four hundred (38,400) dollars, of which three-tenths (3/10) shall be paid forthwith, and the balance in seven (7) annual installments of one-tenth (1/10) each, the first installment thereof falling due on the first day of July, 1920, and the last installment thereof falling due on the first day of July, 1926;

Plaintiff's Exhibit No. 3—Continued

And, Whereas, said offer is conditioned upon the execution and delivery by this corporation of a deed conveying said real property to the State of California, therefore,

Be It Resolved, That this corporation make, execute and deliver to the State of California deed of grant, bargain and sale conveying to the State of California, all that certain real property situate in the County of Santa Cruz, State of California, and particularly described as follows:

The east one-half ($E\frac{1}{2}$) of section thirty-one (31) and the southwest one-quarter ($SW\frac{1}{4}$) of section twenty-nine (29), all in township eight (8) south of range three (3) west, Mount Diablo Base and Meridian.

And Be It Further Resolved, That the president or vice-president and the secretary of this corporation be and they hereby are authorized, in the name of and on behalf of this corporation, and under its corporate seal, and as its act and deed, to make, execute and deliver said hereinbefore mentioned deed to the State of California."

Upon motion duly made and seconded, said resolution was unanimously adopted, each director present voting in favor thereof.

There being no further business to come before the meeting, it was duly adjourned.

D. C. BATES

Secretary.

DEFENDANT'S EXHIBIT No. 1
WESTERN SHORE LUMBER COMPANY
Profit and Loss Statements

	12/31/32	12/31/33	12/31/34	12/31/35	12/31/36
Income					
Timber sales	\$22,404.87	29,552.86	26,391.23	30,649.14	9,211.66
Interest		619.57	768.83	300.70	160.61
Tanbark sales			1,455.52		
Old machinery sales				50.00	435.75
Total Income	22,404.87	30,172.43	28,615.58	30,999.84	9,808.02
Less					
Expense	1,044.55	1,153.24	879.00	898.00	1,020.19
Interest (Stockholders)	7,512.61	6,133.56	4,604.75	3,086.50	3,143.77
Taxes property	6,526.91	6,443.73	4,348.36	4,538.54	5,797.09
Trail upkeep	1,500.00	1,500.00	1,500.00	1,500.00	1,325.00
Tallyman	275.00	325.00	275.00	300.00	275.00
Depletion:					
Redwood	7,620.20	8,552.46	8,891.04	10,904.10	4,881.49
Pine		1,512.86	890.38	821.65	1,100.78
Tanbark			912.12		
Total Expenses	24,479.27	25,620.85	22,300.65	22,048.79	17,543.32
Net Income	(2,074.40)	4,551.58	6,314.93	8,951.05	(7,735.30)

[Endorsed]: Filed Feb. 7, 1941.

DEFENDANT'S EXHIBIT No. 2
WESTERN SHORE LUMBER COMPANY

Western Shore Lumber Company

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Balance Sheets

	12/31/32	12/31/33	12/31/34	12/31/35	12/31/36
ASSETS					
Cash	36,458.26	44,390.09	41,311.10	33,546.38	31,793.35
Land	66,195.55	66,195.55	66,195.55	66,195.55	66,195.55
Construction Equipment	12,219.98	12,219.98	12,219.98	12,219.98	12,219.98
Roads	1,250.98	1,250.98	1,250.98	1,250.98	1,250.98
Reserve for Depreciation (12,219.98)		(12,219.98)	(12,219.98)	(12,219.98)	(12,219.98)
Timber	1,540,730.16	1,540,730.16	1,540,730.16	1,540,730.16	1,540,730.16
Reserve for Depletion... (49,317.45)		(65,760.15)	(83,232.18)	(102,394.25)	(108,376.52)
Totals.....	1,595,317.50	1,586,806.63	1,566,255.61	1,539,328.82	1,531,593.52
LIABILITIES					
Deposit	40,000.00	40,000.00	27,479.08		
Accts. Payable			27,749.08	195.00	195.00
Loans & Assessments			1,157.44		
(stockholders)	104,350.75	97,665.68	88,941.70	88,941.70	88,941.70
Capital Stock	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
Capital Surplus	628,895.70	622,518.32	615,739.83	608,303.51	608,303.51
Earned Surplus (Deficit) (177,928.95)		(173,377.37)	(167,062.44)	(158,111.39)	(165,846.69)
	1,595,317.50	1,586,806.63	1,566,255.61	1,539,328.82	1,531,593.52

[Endorsed]: Filed Feb. 7, 1941.

	Wood	Bark Account	Ties and Split Material
190			
190			
190			
191			
191			
191			
191			
191			
191			
191			
191			
191			4,547.63
191			5,090.98
191			(624.45)
192			5,803.84
192			(281.61)
191	1,187.93	1,743.98	
	<hr/>	<hr/>	<hr/>
	1,187.93	1,743.98	14,386.39

Rec

in the minutes of a Directors' meeting
held

[

DEFENDANT'S EXHIBIT No. 3
 WESTERN SHORE LUMBER COMPANY
 Statement Showing a Summary of Sales—Years 1906 to 1922, Inclusive

	Total Amount	DESCRIPTION								Bark Account	Ties and Split Material
		Property	Stumpage	Machinery	Shakes	Tan Bark	Shingles	Shingle Blocks	Wood		
1906 and 1907.....	None										
1908	\$17,711.69		17,211.69	500.00							
1909	None										
1910	38,737.67		7,756.76		4,194.75	26,786.16					
1911	89.15				89.15						
1912	364.00				364.00						
1913	81.50				81.50						
1914	None										
1915	None										
1916	See below										
1917											
1918	4,547.63			150.00							4,547.63
1919	5,090.98										5,090.98
1920	37,775.55	38,400.00									(624.45)
1921	5,803.84										5,803.84
1922	(281.61)										(281.61)
1916 to 1922, Inc.....	10,023.29						7,017.53	73.85	1,187.93	1,743.98	
Totals	119,943.69	38,400.00	24,968.45	650.00	4,729.40	26,786.16	7,017.53	73.85	1,187.93	1,743.98	14,386.39

[Printer's Note: Figures in parentheses typed in red in original Exhibit.]

Receipts from option on property:

1922	6,000.00
1923	13,500.00
Total	19,500.00

In 1909 \$3,000.00 appears to have been received for the Dougherty Mill & Railroad Extension as referred to in the minutes of a Directors' meeting held on August 16, 1909. This item was closed out in the accounts as an expense item.

[Endorsed]: Filed Feb. 7, 1941.

[Endorsed]: No. 10243. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Western Shore Lumber Company, a corporation, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed September 10, 1942.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10243

UNITED STATES OF AMERICA,

Appellant,

vs.

WESTERN SHORE LUMBER COMPANY,

Appellee.

STATEMENT OF THE POINTS TO BE
RELIED ON BY APPELLANT

The appellant having taken an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment rendered by the District Court for the Northern District of California, hereby designates the following points to be relied on in the prosecution of said appeal:

(1) That the District Court erred in rendering judgment for plaintiff in that said judgment is contrary to the facts found by the Court;

(2) That the judgment of the District Court is contrary to law;

(3) That the District Court erred in making, from the facts found, the Conclusions of Law numbered 1, 2 and 3, to-wit:

“1. A corporation such as the plaintiff, which has reduced its activities to the ownership and holding of *of* property, the distribution of its avails, and doing only such acts as are necessary to the maintenance of its corporate existence, and the private management of its purely internal affairs, is not carrying on or doing business within the meaning of Section 215(a) of the National Industrial Recovery Act, Section 710(a) of the Revenue Act of 1934, or Section 105(a) of the Revenue Act of 1935, commonly known as the “capital stock tax law”.

“2. The liability of the plaintiff for capital stock taxes must be decided by the purpose for which the corporate organization was maintained, and, where, as in the present case, there was no intent during the taxable period in question or for many years prior to such period to carry on any active enterprise and the sole purpose of the corporation was to hold its timber lands and effect a sale of the whole thereof as soon as a fair price could be obtained, the proceeds to be distributed to stockholders, and there was no purpose or activity

which constituted efforts or the use of capital in the pursuit of gain and profit, the plaintiff was not carrying on or doing business within the terms of said "capital stock tax law".

"3. At no time during the period from July 1, 1932 to June 30, 1936 did the plaintiff carry on or do business in such manner as to subject it to the said capital stock tax. The capital stock taxes paid by the plaintiff in respect of the period from July 1, 1932 to June 30, 1936, were collected from it and retained erroneously and without authority of law and contrary to the laws of the United States relating to Internal Revenue, Plaintiff having taken all proper steps for the refund thereof is entitled to the repayment of the aggregate amount of such taxes, together with interest, as provided by law.

FRANK J. HENNESSY,
United States Attorney.

[Endorsed]: Filed Sep. 10, 1942.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION FOR PRINTING THE
RECORD ON APPEAL

To Paul P. O'Brien, Clerk of the above-entitled
Court:

The Appellant designates all of the record as the record to be printed for use in prosecution of the appeal herein, including all exhibits transmitted by order of the District Court to the Clerk of the above-entitled Court.

FRANK J. HENNESSY,
United States Attorney.

[Endorsed]: Filed Sep. 10, 1942.